

A G E N D A
South Pasadena Parks and Recreation Commission
Amedee O. "Dick" Richards Jr., City Council Chambers, 1424 Mission Street
Monday, March 11th, 2019
6:30 p.m.

Andrew Vogel, Chair
Commissioners:
Vice-Chair Karen Tamis, David Beadle, Kristine Kwong, Dollie Chapman,
Michael A. Cacciotti, City Council Liaison
Sheila Pautsch, Community Services Director, Staff Liaison

1. Roll Call R. Martin, Staff

2. Minutes for Approval: February 11th, 2019

COMMENTS ON MATTERS NOT ON AGENDA

3. Public Participation - 3 minutes maximum per speaker

PRESENTATIONS / (ACTION/DISCUSSION)

4. None

ACTION AND / OR DISCUSSION ITEMS

- 5. Appoint Commission Chair.....S. Pautsch
- 6. Adopt-A-ParkS. Pautsch
- 7. Receive and File the Fiscal Year 2019-2020 Community Services
General Fund BudgetS. Pautsch
- 8. Receive and File of the All Star Baseball School Agreement and FinancialsS. Pautsch

COMMUNICATIONS


- 9. City Council Liaison Report M. Cacciotti
- 10. Commissioner Reports..... Commissioners
- 11. Staff Liaison ReportS. Pautsch

ADJOURNMENT **Next meeting: April 8th, 2019**

STATE OF CALIFORNIA (CITY OF SOUTH PASADENA) (COUNTY OF LOS ANGELES)

I declare under penalty of perjury, that I am an employee of the City of South Pasadena, and that I posted this Agenda on the bulletin board in the courtyard of the City Hall at 1414 Mission Street, South Pasadena, on or before March 7th, 2019 as required by Law.

Date: 3/7/19

Signature: 

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February 11th, 2019



**MINUTES OF THE REGULAR MEETING OF THE
PARKS AND RECREATION COMMISSION
OF THE CITY OF SOUTH PASADENA CONVENED
THIS 11th DAY OF FEBRUARY 2019, AT 6:30 P.M.
AMEDEE O. "DICK" RICHARDS, JR., COUNCIL CHAMBERS
1424 MISSION STREET**

1. ROLL CALL

Chair A. Vogel convened the regular meeting of the Parks and Recreation Commission at 6:31 p.m.

Staff R. Martin called the roll. Present were: Chair A. Vogel, Commissioners: K. Kwong, D. Chapman, K. Tamis, Staff liaison Director Pautsch
Other Officials and Staff present: Recreation Supervisor L. Hakobian, Services Coordinator Anthony Kim, and Management Assistant R. Martin
Excused: Commissioner D. Beadle
Arrived after roll call: City Council Liaison Michael Cacciotti

**2. APPROVAL OF THE MINUTES OF THE REGULAR MEETINGS OF
DECEMBER 10TH, 2018**

MOTION: Commission approved the minutes of the regular December 10th, 2018 Parks and Recreation Commission meeting. By voice vote, the motion passed unanimously.

(Chapman, Kwong)

COMMENTS ON MATTERS NOT ON THE AGENDA

3. PUBLIC PARTICIPATION

None

PRESENTATIONS/ (ACTION AND/OR DISCUSSION)

4. NONE

DRAFT

February 11th, 2019

ACTION AND /OR DISCUSSION ITEMS

5. SUMMER CONCERT SERIES – SUBCOMMITTEE, ALTERNATE SCHEDULE, AND ALTERNATE TIME AND SELECTION OF CONCERT SUBCOMMITTEE

Presented by Services Coordinator A. Kim. Staff is looking to nominate Commissioners to serve on the 2019 Summer Concert Subcommittee, as well as consider an alternate schedule and/or event time for the Summer Concerts in the Park series.

Subcommittee

Staff is requesting Commissioners to nominate and fill two positions for the 2019 Summer Concert Subcommittee, which will ultimately finalize the 2019 summer concert schedule. Commissioners D. Chapman and K. Tamis volunteer.

MOTION: Commission approved the nominations for Commissioners D. Chapman and K. Tamis to serve on the 2019 Summer Concert Subcommittee. By voice vote, motion passed unanimously.

(Kwong, Vogel)

Alternate Scheduling

Staff is presenting an alternate schedule for the 2019 Summer Concert series that will extend the season by holding concerts on alternate Sundays instead of consecutive Sundays.

MOTION: Commission approved the proposed alternate Sunday schedule for the 2019 Summer Concerts in the Park series. By voice vote, motion passed unanimously.

(Chapman, Kwong)

Alternate Time

Staff is presenting an alternate start time for each concert by starting and ending one hour later.

MOTION: Commission approved the proposed alternate start (6pm) and end (8pm) time for each concert. By voice vote, motion passed unanimously.

(Kwong, Tamis)

6. SOUTH PASADENA CHILDREN'S MEMORIAL & HEALING GARDEN REQUEST

Presented by Recreation Supervisor L. Hakobian. Application submitted by the Rubin family in honor of their daughter Darby Jean Rubin, who passed away at 15 months in November of 2018.

DRAFT

February 11th, 2019

MOTION: Commission approved the Children's Memorial Healing Garden application submitted for Darby Jean Rubin. By voice vote, motion passed unanimously.

(Tamis, Chapman)

7. APPROVAL OF THE 2019 PARKS AND RECREATION WORK PLAN

Presented by Director S. Pautsch. She created a 2019 Work Plan for the Parks & Recreation Commission that will serve as a guide for tasks and duties for the year.

MOTION: Commission approved the recommended 2019 Parks and Recreation Work Plan as proposed. By voice vote, motion passed unanimously.

(Chapman, Tamis)

8. REVIEW AND APPROVAL THE AMENDMENTS OF CHAPTER 2, ARTICLE IVC. PARKS AND RECREATION COMMISSIONS MUNICIPAL CODE

Presented by Director Pautsch. Municipal Code was recently revised to make more relevant to the work that is currently being completed by the Commission. Staff is looking for approval of following changes made to the Parks and Recreation Commission Municipal Code:

2.46 Powers and duties

- (a) Act in advisory capacity to the city council and director of the community services department in all matters pertaining to parks and ~~public~~ recreation and to cooperate with other governmental agencies and civic groups in the advancement of sound park and recreation planning and programming;
- (c) ~~Assist the city manager in preparing the minimum qualifications for the position of the community services department; and assist in formulating a job description for the position.~~
Provide a forum for community engagement of current and future city-wide youth, teen and adult recreation and community services as well as parks and recreation facility needs.
- (e) Recommend the adoption of standards on organizations, ~~personnel~~, **recreational** areas and facilities, program and financial support.
- (f) ~~Take periodic inventories of recreation services that exist or may be needed~~ **Conduct surveys to assess the parks, recreation and community services need of the community** and interpret the needs of the public to the city council and to the director of the community services department;
- (h) ~~Assist the city manager to the extent requested in making periodic appraisals of the effectiveness of the director and staff in administering the program;~~ **Advocate for the continued growth, availability and quality of city parks, recreation and community services programs, services and facilities;**
- (j) Inform, advise and cooperate with the boards of education and school district ~~and boards of school trustee of the school districts~~ comprising a part of the city or being immediately

DRAFT

February 11th, 2019

adjacent to the city to the extent that such information, advice and cooperation shall be proper and desirable in preparing, revising or carrying out the park and recreation program of the city. (Ord. No. 2187, 2, 2009.)

Commission had the following additional revisions to the Municipal Code:

~~2.45 School district representative.~~

~~The school district appoints one member of the commission, who shall serve a regular term. (Ord. No. 2187, 2, 2009.)~~

(e) Recommend the adoption of standards and municipal codes provisions pertaining to Parks and Recreation, on organizations, personnel, recreational areas and facilities, program and financial support.

(j) Inform, advise and cooperate with the boards of education and of the South Pasadena Unified ~~and school district and boards of school trustee of the school districts comprising a part of the city or being immediately adjacent to the city~~ to the extent that such information, advice and cooperation shall be proper and desirable in preparing, revising or carrying out the park and recreation program of the city. (Ord. No. 2187, 2, 2009.)

MOTION: Commission approved all changes made to Chapter 2 Article IVC. Parks and Recreation Commission Municipal Code as presented and discussed. By voice vote, motion passed unanimously.

(Kwong, Chapman)

9. APPOINT CHAIR AND VICE-CHAIR

Commissioner K. Tamis volunteered herself to serve as Vice-Chair.

MOTION: Commission appointed Commissioner K. Tamis to serve as Vice-Chair. By voice vote, motion passed unanimously.

(Vogel, Chapman)

MOTION: Commission would like to table appointing Commission Chair for the March 11th meeting. By voice vote, motion passed unanimously.

(Tamis, Kwong)

10. CITY COUNCIL LIAISON REPORTS

City Council Liaison M. Cacciotti informed Commission on his involvement with the Santa Monica Mountain Conservancy Committee and their funding contributions for providing additional park amenities for the city. In addition, asked Director S. Pautsch to share the facility

DRAFT

February 11th, 2019

financials with the Commission. He felt the Commission would benefit from having that information.

MOTION: Staff will amend approved 2019 Parks and Recreation Work Plan to add “Periodic review of City Leased / Management agreements and financials”. By voice vote, motion passed unanimously.

(Vogel, Tamis)

11. COMMISSIONER REPORT

Commissioner A. Vogel thanked staff for their efforts in completing renovations at the Arroyo Seco Parks. Commissioner K. Tamis also expressed her appreciation for the improvements at Orange Grove Park.

12. STAFF LIAISON REPORT

Director S. Pautsch updated Commission on the following items:

- Community Services City Budget
- Upcoming City Events
- Offered Commissioners tour of City facilities

ADJOURNMENT

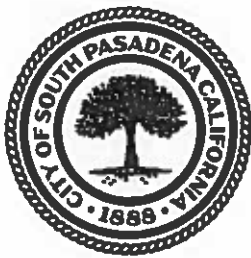
By consensus, the Commission adjourned at 7:45 p.m. The next Commission meeting will be held on March 11th, 2019.

Respectfully Submitted:

Approved By:

Reyna Salazar-Martin
Community Services Management Assistant


Andrew Vogel
Chair



Parks & Recreation Commission Agenda Report

ITEM NO. 7

DATE: March 11, 2019

FROM: Sheila Pautsch, Community Services Director 

SUBJECT: Receive and File the Fiscal Year 2019-2020 Community Services General Fund Budget

Recommendation

It is recommended that the Commission receive and file the Fiscal Year (FY) 2019-2020 Community Services General Fund Budget.

Discussion/Analysis

The 2019-2020 Community Services General Fund Budget (Budget) consists of the Senior Center, Administration and Recreation. The Budget has only a slight increase which is due to the increase in minimum wage and annual merit increases of full time staff where applicable.

The Budget is divided into three Divisions; Seniors, Administration and Recreation. The entire Community Services Budget consists of the fore mentioned as well as Transit, Community Development Block Grant (Senior Meals), and the Arroyo Seco Golf Course.

The Administration Division budget has a few large purchases. They will be tables, chairs; storage bins and shelving units for the lower level, and outdoor benches are planned for the War Memorial Building.

The Recreation Division budget also has a few large purchases which will be replacing the trash receptacles at Arroyo Park; replace the drinking fountain at Garfield Park and maintenance of the tennis courts such as repairing cracks and painting at Garfield and Orange Grove Parks.

The City of South Pasadena (City) is in the middle of a city-wide Fee Study to evaluate current fees and to ensure the fees cost cover of the service provided. The Community Services Department has projected revenues for FY 2019-2020. Provided is a list of actual, current and projections revenues.

	Actuals 2017-18	Actuals 2018-19	Current 2018-19	Projected 2018-19	Projected 2019-20
Rental					
<i>War Memorial</i>	\$50,596	\$45,476	\$26,969	\$40,000	\$45,000
<i>Eddie House</i>	\$4,347	\$2,810	\$1,845	\$3,600	\$3,600

<i>Senior Center</i>	\$1,635	\$2,665	\$1,330	\$2,000	\$4,000
<i>Orange Grove</i>	\$5,235	\$10,311	\$2,912	\$4,000	\$3,000
<i>Youth House</i>	\$6,018	\$4,823	\$2,722	\$5,200	\$5,350
<i>War Kitchen</i>	\$2,250	\$3,300	\$1,125	\$1,500	\$3,500
<i>Parks and Fields</i>	\$63,240	\$64,777	\$33,112	\$40,000	\$65,000
Total	\$133,321	\$134,162	\$70,015	\$96,300	\$129,450
Recreation					
<i>Camp Med</i>	\$363,407	\$490,932	\$188,328	\$320,000	\$500,000
<i>Classes</i>	\$166,517	\$181,975	\$90,958	\$190,000	\$200,000
<i>Special Events</i>	\$11,067	\$12,417	\$6,689	\$9,500	\$9,000
<i>Concerts in the Park</i>	\$10,301	\$14,550	\$1,600	\$13,000	\$14,000
Totals	\$551,442	\$699,874	\$287,575	\$532,500	\$723,000
Overall Total	\$684,763	\$834,036	\$357,590	70% to date	\$852,450

Next Steps

1. The Community Services Budget will be reviewed by the City Manager and Finance Director.
2. The City Council will ultimately approve the final Community Services Budget in June 2019.

Background

Each year the Community Services Department along with each City Department prepares an annual budget for review and approval by the City Council. The City Manager informs City Department Directors on how to move forward with preparing the individual budgets by either increases, decreases or no changes. This year the budgets will be prepared with no changes as the City will be working to overcome the budget gap due to the PERS liability, deferred maintenance of city infrastructure, and staff costs.

The Community Services Budget was prepared with no major increases to staffing or operations and maintenance. Each year the Community Services Department strives to raise revenues through classes, park and facility reservations and camps.

Receive and File the Fiscal Year 2019-2020 Community Services General Fund Budget
March 11, 2019
Page 3 of 3

Fiscal Impact

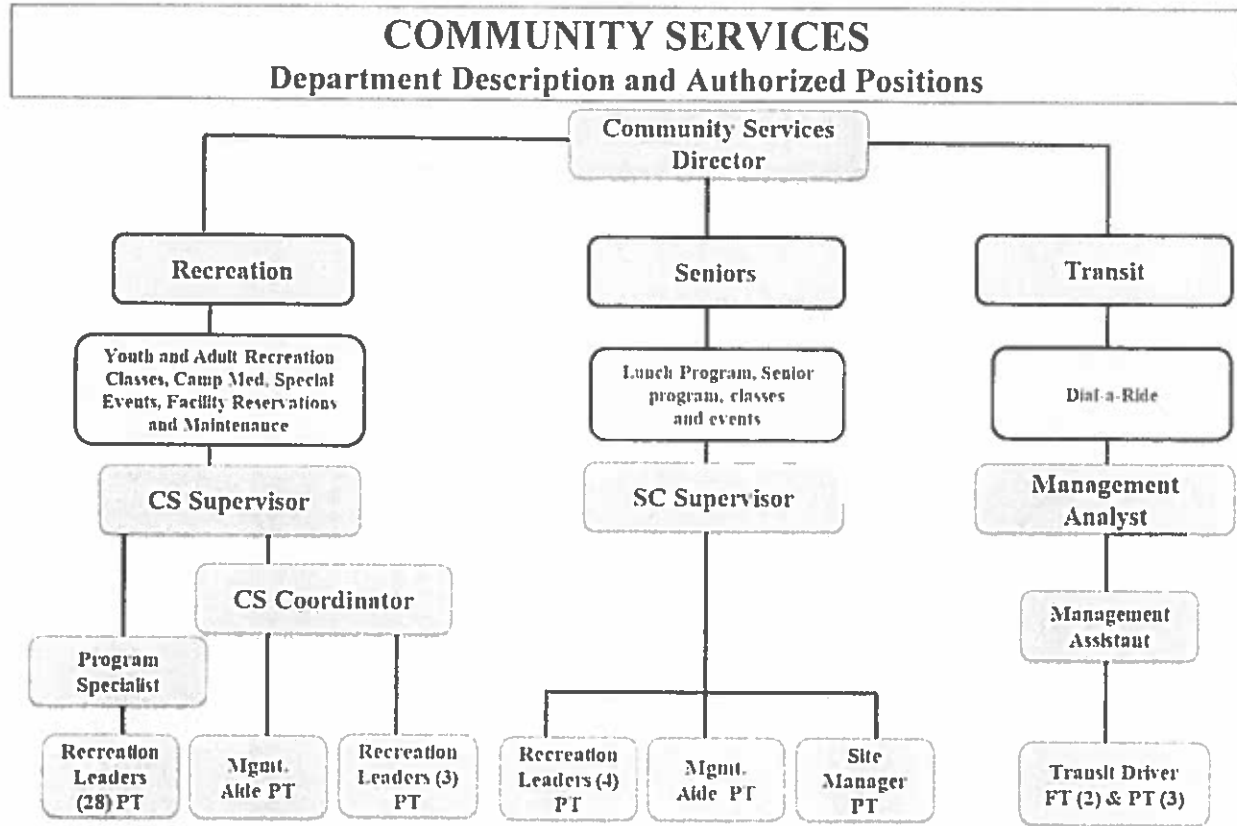
The 2019-2020 Community Services General Fund budget has no impact at this time. It is in draft form and must be reviewed and approved by the City Council.

Public Notification of Agenda Item

The public was made aware that this item was to be considered this evening by virtue of its inclusion on the legally publicly noticed agenda, posting of the same agenda and reports on the City's website and/or notice in the *South Pasadena Review* and/or the *Pasadena Star-News*.

Attachment: Community Services General Fund Budget

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SENIOR SERVICES

Budget Detail

101-8021

Acct	Account Title	Actual 2014/15	Actual 2015/16	Actual 2016/17	Adopted 2017/18	Mid-Year 2017/18	Estimated 2017/18	Proposed 2018/19
7000	Salaries - Permanent	75,807	33,849	79,199	77,079	38,424	78,557	76,316
7010	Salaries - Temp / Part	86,470	88,784	79,836	132,764	50,441	95,000	132,764
7070	Leave Buyback	30	-	-	2,100	-	2,100	2,100
7100	Retirement	18,632	15,963	18,997	26,146	19,578	26,122	29,322
7108	Deferred Compensation	722	400	766	770	148	753	763
7110	Workers Compensation	4,839	4,664	5,156	1,180	1,405	2,887	1,169
7122	Unemployment Insurance	294	-	2,223	-	-	-	-
7130	Group Health Insurance	7,865	5,005	8,580	8,580	5,490	10,980	13,380
7140	Vision Insurance	220	140	240	240	120	240	240
7150	Dental Insurance	825	525	900	900	450	900	900
7160	Life Insurance	108	54	100	99	50	99	99
7170	FICA - Medicare	4,695	4,580	6,095	9,349	2,043	4,363	9,337
	<WAGES & BENEFITS>	200,507	153,964	202,092	259,207	118,149	222,001	266,390
8000	Office Supplies	3,972	3,570	3,584	3,000	844	3,000	3,000
8010	Postage	2,741	3,876	1,466	2,000	-	2,000	2,000
8020	Special Department Expense	15,857	14,926	14,978	13,200	8,952	13,200	14,000
8040	Advertising	218	620	-	400	-	400	400
8050	Printing/Duplicating	4,265	3,144	3,637	4,200	1,724	4,200	4,200
8060	Dues & Memberships	165	180	180	500	-	180	200
8090	Conference & Meeting Expense	1,179	767	38	500	425	900	-
8110	Equipment Maintenance	4,228	2,757	2,474	3,500	974	2,700	3,500
8120	Building Maintenance	3,394	3,841	1,682	3,600	1,808	3,600	3,200
8140	Utilities	12,686	12,404	13,778	-	217	-	-
8170	Professional Services	3,500	1,750	3,500	3,000	-	-	3,000
8180	Contract Services	25,669	22,987	18,977	30,900	1,119	29,000	29,150
8200	Training Expense	591	298	239	500	-	-	500
8264	Special Events	3,247	3,536	2,971	5,000	1,587	4,700	5,000
8267	Classes	13,627	15,189	21,802	19,200	10,685	19,200	19,500
8300	Lease Payment	1,426	653	192	780	64	780	780
	<OPERATIONS & MAINTENANCE>	96,765	90,498	89,498	90,280	28,401	83,860	88,430
[101-8021] Senior Services Total		297,272	244,462	291,590	349,487	146,550	305,861	354,820

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SENIOR SERVICES

Budget Detail

101-8021

PERSONNEL SERVICES

- 7000 Regular Salaries
Compensation for Senior Services Supervisor
- 7010 Part-Time Salaries
Provides funds for Senior Division Staff; Management Aide, Site Manager, and Recreation Leaders (4) (\$132,000).
- 7070 Leave Buyback
Provides funds to employees who opt to sell back hours of their leave balances (\$2,100)

OPERATIONS & MAINTENANCE

- 8000 Office Supplies
Office paper, computer, and miscellaneous office supplies (\$3,000).
- 8010 Postage
Provides funds for mailing Senior Center newsletter (\$800), general Senior Center general office mailings (\$500), outreach mailers (\$500), and special events advertising (\$200) \$2,000
- 8020 Special Department Expense
Provides funds for supplies for activities and services offered by the Senior Center, such as; Volunteer program (\$1,800), entertainment for events (\$2,000), event supplies (table covers, napkins, birthday cake, cups etc. \$2,700), Home Delivery Meal Program supplies (\$2,550), Mileage reimbursement for volunteers (\$1,000), Coffee supplies (\$2,700), and cleaning supplies (\$2,000) \$15,000
- 8040 Advertising
Provides funds to promote senior services and events (\$400)
- 8050 Printing and Duplication
Provides funds to print Senior Center newsletter six times per year (\$3,000), business envelopes (\$850), and printing of event flyers (\$600) \$4,445
- 8060 Dues, Memberships & Subscriptions
California Parks and Recreation Society annual membership for Supervisor (\$200)
- 8090 Conference and Meeting Expense
Provides funds for California Park and Recreation Society annual conference registration, lodging and travel for Community Services Supervisor (\$400)
- 8110 Equipment Maintenance
Provides funds for office equipment maintenance fire extinguishers (\$600), kitchen fire suppression system (\$500), senior center & computer lab Wi-Fi (\$2,400) \$3,500

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- 8120 Building Maintenance
Provides funds for quarterly upholstery cleaning of furnishings, carpets (\$1,000); pressure washing of Center entry (\$500); Fire extinguishers (\$200), cleaning of stainless surfaces in kitchen 3 times year (\$1,000); and cleaning of drapes (\$500) \$3,200
- 8180 Contract Services
Provides funds for Fire and Security Systems (\$1,150), Annual licensing Sportsman Software (\$1,100), Computer lab increased bandwidth (\$1,400) and Senior Meal Program costs not covered by CDBG \$36,500 (due to increased rate for meal program contract) \$40,150
- 8200 Training Expense
Provides funds for staff training (\$500)
- 8264 Special Events/Excursions
Provides funds to senior citizens excursions, twelve adventures are planned with small entrance fee (\$5,000)
- 8267 Classes
Provides for payments to instructors for senior citizen leisure classes. Instructors are generally reimbursed 80% of their total class revenue. The City retains 20%, (\$19,500).
- 8300 Lease Payment
Provides for a portion of postage machine (\$780)

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COMMUNITY SERVICES

Budget Detail

101-8031

Acct	Account Title	Actual 2014/15	Actual 2015/16	Actual 2016/17	Adopted 2017/18	Mid-Year 2017/18	Estimated 2017/18	Proposed 2018/19
7000	Salaries - Permanent	172,464	169,296	171,747	108,338	58,464	117,840	107,265
7010	Salaries - Temp / Part	7,601	5,052	1,439	10,500	(215)	10,500	10,500
7020	Overtime	(3,054)	(1,941)	(1,013)	-	(1,119)	-	-
7040	Holiday	-	-	154	-	-	-	-
7070	Leave Buyback	178	783	847	3,000	-	3,000	3,000
7100	Retirement	27,012	31,384	32,868	67,415	17,895	23,220	28,418
7108	Deferred Compensation	1,153	1,230	1,086	1,083	220	1,122	1,072
7110	Workers Compensation	7,765	8,589	6,445	1,710	1,002	1,888	1,693
7122	Unemployment Insurance	-	-	-	-	-	-	-
7130	Group Health Insurance	12,363	15,728	13,778	6,435	3,277	6,784	6,435
7140	Vision Insurance	228	340	288	180	63	127	180
7150	Dental Insurance	1,076	1,261	1,069	675	235	470	675
7160	Life Insurance	206	205	175	74	39	77	74
7170	FICA - Medicare	2,840	3,108	3,134	2,221	1,075	1,984	2,206
	<WAGES & BENEFITS>	229,832	235,035	232,017	201,631	80,936	167,012	161,518
8000	Office Supplies	1,385	1,447	1,433	1,500	33	1,450	1,000
8010	Postage	1,150	864	394	1,000	-	750	650
8020	Special Department Expense	15,449	10,175	8,127	10,250	8,214	10,250	11,830
8040	Advertising	312	2,125	500	150	-	-	150
8050	Printing/Duplicating	336	375	-	400	-	-	200
8060	Dues & Memberships	770	1,105	875	640	-	640	650
8090	Conference & Meeting Expense	2,386	839	2,726	1,500	-	-	1,000
8110	Equipment Maintenance	632	6,509	6,205	6,335	6,006	7,735	7,035
8120	Building Maintenance	9,958	10,168	11,608	15,250	4,623	15,250	14,450
8140	Utilities	1,016	1,981	1,238	-	107	-	-
8180	Contract Services	4,213	6,689	19,817	7,430	3,045	7,430	9,065
8200	Training Expense	488	398	261	250	79	80	250
8264	Special Events	10,000	1,990	-	-	-	-	-
8267	Classes	-	94	-	-	-	-	-
8300	Lease Payment	1,298	257	247	500	64	150	300
	<OPERATIONS & MAINTENANCE>	49,393	45,016	53,431	45,205	22,170	43,735	46,580
[101-8031] Community Services Total		279,225	280,051	285,448	246,836	103,106	210,747	208,098

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COMMUNITY SERVICES

Budget Detail

101-8031

PERSONNEL SERVICES

- 7000 Regular Salaries
Compensation for Community Services Director
- 7010 Wages - Seasonal/Part-Time Employees
Provides funds for Recreation Leader for reservations (\$10,500)
- 7070 Leave Buyback
Provides funds to employees who opt to sell back hours of their leave balances (\$2,500)

OPERATIONS & MAINTENANCE

- 8000 Office Supplies
Provides funds for the purchase of office paper, computer supplies, meeting supplies, and miscellaneous supplies (\$1,000)
- 8010 Postage
Provides funds for mailing of general information on recreation and facility rental programs, community outreach for special projects, and for special events (\$1,000)
- 8020 Special Department Expense
Provides funds for general maintenance supplies, Parks & Recreation Commission support, tools for the War Memorial Building, Eddie Park House, and Youth House (\$2,000) Includes special meetings/community outreach/meeting supplies (\$1,800) and park development project costs (reports and studies (\$1,000). Includes promotional materials (\$500), Community Garden Caltrans lease payment (\$100), Lower level War Memorial Tables and Chairs (\$2,000), department staff shirts (\$400), expense for key duplication (\$200), and shelving units and storage bin for Lower level of War Memorial (\$1,000) electrical cord covers for events (\$250), spider box for events (\$750) portion of City's Constant Contact (\$250), licensing fees for concerts for SESAC (\$875), BMI (\$350) and ASCAP (\$355) Holiday Décor (\$1,000) Projector Screen (\$1,000) \$11,830
- 8040 Advertising
Advertise and promote facility rentals, special events, and staff recruitments (\$150).
- 8050 Printing and Duplication
Provides funds for costs to print flyers/posters for promotion of rental facilities (War Memorial, Youth House, Mid-level at Orange Grove, Eddie House) (\$400).
- 8060 Dues, Memberships & Subscriptions
Provides funds for the California Parks and Recreation Society annual membership for Agency Membership CPRS (\$475) and NRPA (\$175) \$650
- 8090 Conference & Meetings Expenses
Provides funds for Community Services Director to attend the annual California Park and Recreation Society (CPRS) conference in March 2018 (\$1,000) and other relevant

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meetings (\$800) \$1,800

8110 Equipment Maintenance

Provides for annual maintenance of kitchen, and fire extinguishing equipment at the War Memorial Building, Eddie Park House, and Garfield Youth House (\$850), furnishings and table games for Recreation (\$2,000) War Memorial Building semi-annual range hood cleaning (\$735) exterior benches for War Memorial (\$3,450) \$7,035

8120 Building Maintenance

Provides for quarterly War Memorial Building wood floor resurfacing (\$8,500), heating/air conditioning service (\$700), repairs and cleaning services at the War Memorial Building, Youth House and Eddie Park House (\$3,500), general repairs (\$800), clean drapes for WMB (\$1,750) \$15,250

8180 Contract Services

Provides funds for the security & fire alarm for Youth House (\$850), fire alarm at War Memorial Building (\$915), security alarm at War Memorial Building (\$1,200), fire and security at Eddie Park (\$1,680), servicing of facility kitchen appliances (\$1,250), and Sportsman Recreation Software annual licensing (\$1,200) \$7,095

8200 Training Expense

Provides funds for job related training seminars and materials (\$250)

8300 Lease Payment

Provides partial funds for annual postage meter (\$500)

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RECREATION AND YOUTH SERVICES

Budget Detail

101-8032

Acct	Account Title	Actual 2014/15	Actual 2015/16	Actual 2016/17	Adopted 2017/18	Mid-Year 2017/18	Estimated 2017/18	Proposed 2018/19
7000	Salaries - Permanent	116,992	98,014	134,906	192,918	87,258	188,875	194,398
7010	Salaries - Temp / Part	187,394	202,696	225,294	267,562	154,672	267,562	267,562
7020	Overtime	-	143	252	5,000	1,588	4,000	4,500
7055	IOD - Non Safety	-	42	-	-	-	-	-
7070	Leave Buyback	28	-	-	2,100	964	964	1,500
7100	Retirement	20,470	30,545	28,099	53,351	37,854	49,481	59,693
7108	Deferred Compensation	730	796	822	792	158	805	784
7110	Workers Compensation	12,877	15,244	12,823	4,692	4,040	7,046	4,814
7120	Disability Insurance	-	2,028	-	-	-	-	-
7122	Unemployment Insurance	4,306	12,676	2,383	-	(258)	(258)	-
7130	Group Health Insurance	9,136	10,834	10,336	18,600	9,056	18,375	18,600
7140	Vision Insurance	440	520	480	720	322	645	720
7150	Dental Insurance	1,500	1,950	1,800	2,700	1,205	2,410	2,700
7160	Life Insurance	189	216	200	297	149	297	297
7170	FICA - Medicare	13,246	14,464	16,079	19,696	10,573	16,989	19,686
	<WAGES & BENEFITS>	367,308	390,168	433,474	568,428	307,581	557,191	575,254
8000	Office Supplies	2,218	2,500	3,090	2,500	696	2,500	2,500
8010	Postage	628	506	-	500	-	500	500
8020	Special Department Expense	7,428	10,523	9,587	10,800	3,271	10,800	5,050
8040	Advertising	777	474	561	1,150	102	785	1,150
8050	Printing/Duplicating	-	-	57	250	-	125	250
8060	Dues & Memberships	315	315	315	555	-	555	555
8090	Conference & Meeting Expense	3,794	2,245	4,002	2,630	2,660	2,660	4,385
8110	Equipment Maintenance	2,136	1,217	248	850	-	850	850
8120	Building Maintenance	11,547	7,055	6,458	20,300	17,507	20,300	20,550
8180	Contract Services	13,712	19,609	19,983	20,215	3,254	20,000	20,150
8200	Training Expense	325	324	299	300	88	125	300
8264	Special Events	26,809	41,343	44,621	56,700	26,772	56,700	56,700
8267	Classes	139,390	136,759	112,905	123,500	52,782	115,255	123,500
8268	Camp Services	35,952	47,156	44,167	47,125	14,149	47,125	47,155
8269	Teen Center	-	-	-	-	-	-	5,000
8300	Lease Payment	1,254	257	193	260	64	260	260
	<OPERATIONS & MAINTENANCE>	246,285	270,283	246,486	287,635	121,346	278,540	288,855
8530	Computer Equipment	-	-	-	-	-	-	-
	<CAPITAL OUTLAY>	-	-	-	-	-	-	-
[101-8032] Recreation and Youth Services Total		613,593	660,451	679,960	856,063	428,927	835,731	864,109

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RECREATION AND YOUTH SERVICES

Budget Detail

101-8032

PERSONNEL SERVICES

- 7000 Regular Salaries
Compensation for Youth Services Supervisor, Community Services Coordinator and Program Specialist
- 7010 Wages – Seasonal/Part-Time Employees
Provides funds for Recreation Division Recreation Leaders and Management Aide (\$267,562)
- 7020 Overtime
Provides overtime pay for after-hour /weekend related events to recreation. (\$4,500)
- 7070 Leave Buyback
Provides funds for staff that opt to sell back hours of their leave balance (\$1,500)

OPERATIONS & MAINTENANCE

- 8000 Office Supplies
Office paper, computer, and miscellaneous office supplies (\$2,500).
- 8010 Postage
Provides funds for correspondence and advertising for recreation programs and services and special events receipts for leisure classes, special events, park picnic reservations (\$250), and event promotion and advertising (\$250) \$500
- 8020 Special Department Expense
Cleaning supplies (\$450), Youth Commission activities (\$500), mileage reimbursement (\$500), and replacement of basketball court nets (\$100), staff shirts (\$600), replenishment of first aid kits for special events (\$100), and special event equipment/supplies (\$2,800) \$5,050
- 8040 Advertising
Provides funds to promote special events such as Breakfast with Santa, Halloween Spooktacular, Spring Eggstravaganza, Doggy Day, and Concerts in the Park (\$1,150)
- 8050 Printing and Duplication
Provides funds to print Class & Program Guide limited copies (\$250)
- 8060 Dues, Memberships & Subscriptions
California Parks and Recreation Society annual membership for Supervisor, Coordinator, and Program Specialist (\$555)
- 8090 Conference and Meeting Expense
Provides funds for California Park and Recreation Society annual conference registration in Southern California for Community Services Supervisor, Community Services Coordinator, and Program Specialist (\$1,800)

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- 8110 Equipment Maintenance
Provides funds for office equipment maintenance including copy/fax machine and printer (\$850)
- 8120 Building Maintenance
Provides for supplemental cleaning and minor building repairs at the Orange Grove Recreation Center (\$1,500), HVAC maintenance (\$700), key duplication (\$100), Orange Grove Park bathroom maintenance (\$1,000), replacement of trash receptacles at Arroyo Park (\$7,650), replacement of drinking fountain at Garfield Park (\$4,600), and maintenance of tennis courts (\$5,000) \$20,550
- 8180 Contract Services
Provides funds for contract services for portable toilet service at the Skate Park and arroyo baseball field (\$5,200), fire alarm service for Recreation Center (\$755), security system for Recreation Center (\$900), Skate Park repairs (\$12,125), annual maintenance of Sportsman (\$1,200) \$20,180
- 8200 Training Expense
Provides funds for staff training (\$300)
- 8264 Special Events
Provides funds for South Pasadena Doggy Day (\$750), Spring Eggstravaganza (\$5,000), Community Baseball Night (\$2,500), two Movies in the Park (\$6,000), two Shakespeare in the Park (\$3,000), Walk/Bike to School (\$1,450), Halloween (\$3,500), Breakfast with Santa (\$3,000), Snow Day (\$12,000), and National Night Out (\$1,500). Revenue received for some events. Provides funds for the annual summer concerts in the Park series, this program is funded with community donations. Five Summer Concerts in the Park Series (\$18,000) \$56,700
- 8267 Classes
Provides for payments to instructors for quarterly, tot, teen, adult leisure classes. Instructors are generally reimbursed 65% of their total class revenue. The City generally retains 35%. Based upon prior years, it is estimated that leisure classes will generate \$200,000 next year. 65% of which is paid to the contracted instructors (\$130,000).
- 8268 Camp Med
Provides funds for Camp Med school year and summer program supplies and trips; field trips (\$11,500), Camp med supplies and activities (\$5,000), Middle School camp program (\$4,000), Snacks (\$4,000), Summer pool usage (\$2,550), Program supplies (\$2,500), Purchase Outdoor Recreation Games (\$2,000), Camp Med t-shirts (\$1,900), First aid supplies (\$1,900), California Park and Recreation trainings for part-time staff (\$1,900), Purchase new compartment storage units (\$1,500), Provides funds for required First Aid/CPR training for staff (\$1,800), Internet (\$1,000), Monthly special events (\$1,000), Parent Night (\$1,000), Annual licensing for MPLC & BMI (\$910), Carpet cleaning (\$600), Printing for Camp Med program (\$600), Staff shirts for After-School (\$500), Volunteer Shirts (\$350), Annual When2Work staff scheduling system(\$330), Purchase of Computer Lab educational software (\$315), Mileage reimbursement (\$300), provides funds to promote Camp Med after school care and summer programs (\$300) \$47,755

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8269 Teen Center

Provides funds for the operation of the teen center during the school year. Program supplies and activities (\$1,000), snacks (\$1,000), Internet (\$550), carpet cleaning (\$300), purchase of advertisements (\$250), first aid supplies (\$100), board games (\$250), guest speakers (\$1,000), mileage reimbursement (\$150), special events such as Halloween, holiday and end of the year programs (\$250), and staff training (\$150) \$5,000

8300 Lease Payment

Provides for a portion of postage machine (\$260)



Parks & Recreation Commission Agenda Report

ITEM NO. 8

DATE: March 11, 2019

FROM: Sheila Pautsch, Community Services Director *SP*

SUBJECT: **Receive and File of the All Star Baseball School Agreement and Financials**

Recommendation

It is recommended that the Commission receive and file the All Star Baseball School Agreement and Financials.

Discussion/Analysis

The All Star Baseball School has been operating since mid-2004. Dylan and Tao Gaines were granted the lease for the construction and maintenance of the batting cages and school. Since the opening, the batting cages along with the pitching and batting school have been open to the community and serve the South Pasadena Little League. During the last lease agreement, the Gaines put approximately \$50,000 into the facility to upgrade the cages and surroundings. New artificial turf was laid for the baseball school area, maintenance to the ball machines as well as a pitching / batting coaching cage was installed. The cages and school continue to do well during the baseball season. Summer baseball camp is also offered through the All Star Baseball School which attracts many local youth.

Next Steps

1. Continue to monitor the batting cage and school financials.
2. In early 2021, the City Council will be notified of the possible first one year extension and review the agreement and financials and make a recommendation regarding the extension.

Background

The All Star baseball School lease began in March 2003. The purpose of the lease was for the lessee to construct, maintain and operate a high quality batting cage facility which included pitching and batting coaching to the community and public. The lease was a ten year lease upon completion of the construction. Quarterly payments were received which consisted of 10% of the gross revenue. Gross revenue included, but not limited to, batting cage reservations, coaching, lessons, merchandise and refreshments. The first ten years ran smoothly and an amendment to that agreement was approved for an addition five year term that expired in June 2018. In May 2018, an additional three (3) year term with two additional one year terms extension and to provide for an increase in monthly gross receipts from 10% to 15% was approved by City Council.

Fiscal Impact		
Fiscal Year	Gross Receipts	City %
2004-2005	\$74,991.83	\$7,499.18
2005-2006	\$108,465.20	\$10,846.52
2006-2007	\$52,050.91	\$5,205.09
2007-2008	\$92,797.61	\$9,279.76
2008-2009	\$82,902.56	\$8,290.26
2009-2010	\$104,844.37	\$9,942.98
2010-2011	\$132,035.62	\$13,203.56
2011-2012	\$100,866.33	\$10,086.63
2012-2013	\$83,682.90	\$8,368.29
2013-2014	\$118,963.00	\$11,896.30
2014-2015	\$161,600.19	\$16,159.01
2015-2016	\$129,977.76	\$12,998.64
2016-2017	\$135,983.32	\$13,598.31
2017-2018	\$62,550.03	\$6,255.00
2018-2019	\$ 47,001.25	\$ 7,045.16
Total:	\$1,518,232.73	\$153,556.96

Public Notification of Agenda Item

The public was made aware that this item was to be considered this evening by virtue of its inclusion on the legally publicly noticed agenda, posting of the same agenda and reports on the City's website and/or notice in the *South Pasadena Review* and/or the *Pasadena Star-News*.

Attachments:

1. Original All Star Baseball School Lease Agreement
2. First Amendment
3. Second Amendment
4. Third Amendment

ATTACHMENT 1

Original All Star Baseball School Lease Agreement

LEASE AGREEMENT

by and between

CITY OF SOUTH PASADENA

CITY,

and

DYLAN GAINES, an individual,

LESSEE.

LEASE

This Lease Agreement (this "Lease") is made by and between the CITY OF SOUTH PASADENA, a municipal corporation ("City") and DYLAN GAINES, an individual ("Lessee").

I. [§ 100] SUBJECT OF LEASE

A. [§ 101] Purpose of the Lease

The purpose of this Lease is Lessee to install, maintain and operate a high quality, state of the art batting cage facility (the "Improvements" as defined herein), including pitching and batting coaching, open to the community and the public (the "Batting Cages") on part of City's Arroyo Youth Recreation Park (the "Site"). The lease of the Site and the construction, maintenance and operation of the Batting Cages pursuant to this Lease, and the fulfillment generally of this Lease, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

B. [§ 102] The Site

The Site is that certain real property illustrated and designated as such on the "Map of the Site" (which is attached hereto and incorporated herein as Exhibit A) and having the legal description set forth in the "Description of the Site" (which is attached hereto and incorporated herein as Exhibit B). For purposes of determining Lessee's obligations under this Lease, including tax obligations, the parties agree the Site is limited to the specific area described in Exhibit A.

C. [§ 103] The Improvements

The term "Improvements" as used in this Lease means any and all improvements to the Site (including, but not limited to, (i) seven (7) state of the art batting cages on a concrete slab, (ii) two (2) pitching cages/areas (at least one of which is on a concrete slab), (iii) an administration building on a concrete slab, (iv) a small outdoor party area on a concrete slab and (v) signage) only as approved by City and provided on the Site by Lessee pursuant to this Lease, including any and all amendments, modifications, additions, substitutions and replacements thereof.

D. [§ 104] Hazardous Substances

1. "Hazardous Substance," as used in this Lease means any substance, material or waste which is or becomes regulated by the United States government, the State of California, or any local or other governmental authority, including, without limitation, any material, substance or waste which is (i) defined as a "hazardous waste," "acutely hazardous waste," "restricted hazardous waste," or "extremely hazardous waste" under Sections 25115, 25117 or 25122.7, or

listed pursuant to Section 25140, of the California Health and Safety Code; (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code; (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code; (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code; (v) petroleum; (vi) asbestos; (vii) a polychlorinated biphenyl; (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Code of Regulations, Chapter 20; (ix) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317); (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. Section 6903); (xi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601); or (xii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any governmental requirements either requires special handling in its use, transportation, generation, collection, storage, treatment or disposal, or is defined as "hazardous" or is harmful to the environment or capable of posing a risk of injury to public health and safety.

2. The development, construction and uses of the Site permitted under this Lease do not require the presence of any Hazardous Substance on the Site, except for those customarily used in the ordinary course of business for such development, construction and use.

3. Lessee shall not bring or allow to be brought onto the Site or use or store on the Site any Hazardous Substances without the prior express written consent of City, except for those Hazardous Substances (including without limitation fuel stored in motor vehicles) customarily used in the ordinary course of business in the use and operation of the Site for the Batting Cages and the Improvements.

4. The following covenants pertain to Lessee's occupancy and use of the Site and Improvements except for those Hazardous Substances customarily used in the ordinary course of business or on, in or under the Site which were present prior to the date this Lease is signed by Lessee:

- a. No underground storage tanks for Hazardous Substances shall be installed without the prior written approval of City's Chief Administrative Officer.
- b. City, or its officers, employees, contractors or agents, shall at all times have the right to go upon and inspect the Site and Improvements and the operations conducted thereon to assure compliance with the requirements herein stated. City shall provide reasonable prior notice to Lessee of such entry, and shall seek to minimize interference with Lessee's use of the Site and Improvements as much as is reasonably feasible. Such entry shall be in compliance with all applicable safety rules and regulations.

This inspection may include taking samples for testing of substances and materials present and/or testing soils on the Site and Improvements. City shall indemnify, defend, and hold harmless Lessee from and against any claims, liabilities, losses, and damage caused by City during any such inspections, and shall be responsible for the prompt repair and/or restoration of any such damage caused by City during any such inspection.

- c. Lessee shall be responsible for posting on the Site and Improvements any signs required by Section 25249.6 of the California Health and Safety Code and regulations promulgated pursuant thereto. Lessee shall also complete and file any business response plans or inventories required by Chapter 6.95 of the California Health and Safety Code and regulations promulgated pursuant thereto. Lessee shall concurrently file a copy of any such business response plan or inventory with City.
- d. Lessee shall immediately notify City in writing of the release of any Hazardous Substance on the Site and Improvements in violation of applicable law.
- e. Lessee shall, to the extent required by applicable law, immediately remove any Hazardous Substances located on the Site and Improvements and shall dispose of such Hazardous Substances in a safe and legal manner. Lessee shall immediately disclose to City its disposal of any Hazardous Substance located on the Site and Improvements and upon City's written request shall provide written documentation of its safe and legal disposal.

5. Lessee shall be responsible for and bear the entire cost of removal and disposal of Hazardous Substances, except for any portion thereof that may be the responsibility of City or on, in or under the Site which were present prior to the date this Lease is signed by Lessee. City may also pass through to Lessee any and all clean-up costs incurred by City as a result of Lessee's activities on the Site and Improvements or the presence of any Hazardous Substance(s) on, in or under the Site and Improvements, unless that presence occurred prior to the date this Lease is signed by Lessee. Upon termination of this Lease, Lessee is required, in accordance with all applicable laws, to remove from the Site and Improvements any equipment or improvement to the property contaminated by Hazardous Substances.

6. By this Lease, Lessee provides to City, effective upon the date of this Lease, an indemnification of City and its respective members, officers, employees, agents, contractors and consultants relating to the environmental condition of the Site and the presence of Hazardous Substances thereon or on, in or under the Site which were present prior to the date this Lease is signed by Lessee. Therefore, Lessee hereby agrees to indemnify, defend and hold harmless City and its respective members, officers, agents, employees, contractors and consultants, from any

claims, actions, suits, legal and administrative proceedings, liability, injury, deficiency, damages, fines, penalties, punitive damages, costs and expenses (including, without limitation, the cost of any cleanup, remediation, removal, mitigation, monitoring or testing of Hazardous Substances, except for Hazardous Substances on, in or under the Site which were present prior to the date this Lease is signed by Lessee, and reasonable attorneys' fees) resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Substances on, under, in or about, or the transportation of any Hazardous Substances to or from, the Site, except for Hazardous Substances on, in or under the Site which were present prior to the date this Lease is signed by Lessee; or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Substances on, under, in or about, to or from, the Site, except for Hazardous Substances on, in or under the Site which were present prior to the date this Lease is signed by Lessee.

7. From the date of this Lease, Lessee hereby waives, releases and discharges City and its respective members, officers, employees, agents, contractors and consultants, from any and all present and future claims, demands, suits, legal and administrative proceedings, and from all liability for damages, losses, costs, liabilities, fees and expenses (including, without limitation, attorney's fees) arising out of or in any way connected with City's or Lessee's use, maintenance, ownership or operation of the Site, any Hazardous Substances on the Site, or the existence of Hazardous Substances contamination in any state on the Site, however the Hazardous Substances came to be placed there, except that arising out of the intentional misconduct of City or any of its employees, officers or agents. Lessee acknowledges it is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

As such relates to this Section 104, Lessee hereby waives and relinquishes all rights and benefits which they may have under Section 1542 of the California Civil Code. By agreeing to the release of this paragraph, Lessee is not thereby assuming any liability whatsoever to any person or entity for any claims, demands, suits, legal and administrative proceedings and for any liability for damages, losses, costs, liabilities, fees and expenses, including attorney's fees and costs of remediation of Hazardous Substance(s), where such Hazardous Substance(s) were present on the Site prior to the date on which Lessee signs this Lease.

8. Lessee shall not be legally responsible under this Lease, and shall not be obligated in indemnity or apportionment under this Lease, for any claims, demands, suits, legal and administrative proceedings and for any liability for damages, losses, costs, liabilities, fees and expenses, including attorney's fees and costs of remediation of Hazardous Substance(s), where such Hazardous Substance(s) did not originate on the Site but migrated onto, into or under the

Site through run-off, osmosis or any other process by which such Hazardous Substance(s) originated elsewhere and not by any action or action of Lessee or Lessee's employees or agents.

E. [§ 105] Parties to the Lease

1. [§ 106] City

City is the City of South Pasadena, a municipal corporation existing under the California constitution and state law.

The principal office of City is located at 1414 Mission Street, South Pasadena, California 91030.

"City" as used in this Lease, includes the City of South Pasadena and any assignee of or successor to its rights, powers and responsibilities.

2. [§ 107] Lessee

Lessee is DYLAN GAINES, an individual.

The principal office of Lessee is located at 1220 N. Hollywood Way, Burbank, California, 91505.

Wherever the term "Lessee" is used herein, such term shall also include any permitted nominee or assignee as herein provided.

II. [§ 200] LEASE OF THE SITE

A. [§ 201] Lease

For and in consideration of the conditions, covenants and agreements set forth herein, City hereby leases and demises the Site to Lessee and Lessee does hereby take and lease the Site from City.

B. [§ 202] Term of the Lease

1. Unless extended or sooner terminated as provided herein, the term of this Lease (the "Term") shall begin on the Effective Date (as defined below) and expire on the earlier to occur of (i) the Batting Cages are not completed and open for public use by June 16, 2003, (ii) the tenth (10th) annual anniversary of the Effective Date, or (iii) the date City and Lessee reasonably determine batting cages are no longer financially feasible for operation at the Site. If

City determines it is in the public interest to continue to have batting cage facilities operated on the Site and this Lease will terminate pursuant to subparagraph (ii) above, then one-hundred twenty (120) days prior to executing a new lease of the Site with another party for such purpose, City shall first provide written notice of such determination to Lessee and an opportunity for Lessee to negotiate with City, in good faith for sixty (60) days, to reach agreement on a new five-year (5-year) lease with City for the Site for such purpose on then fair market terms acceptable to the parties. If, for any reason, the Batting Cages and Improvements are not completed and open for public use by June 16, 2003, then either party may, at their sole discretion, cancel this Lease, and the parties, thereafter, would have no further rights and obligations under this Lease, except as provided in Section 401.

2. At the expiration or earlier termination of this Lease, Lessee shall execute, acknowledge and deliver to City, within thirty (30) days after written demand by City, a valid and recordable quitclaim deed covering the Site and the Improvements, free and clear of all liens and encumbrances.

III. [§ 300] RENT

A. [§ 301] Quarterly Payment

Commencing with the fifteenth day of the fourth full calendar quarter after the Commencement Date (as defined below) and on the fifteenth day of each calendar quarter, thereafter, until termination of this Lease, Lessee shall pay to City, as rent, a sum equal to ten percent (10%) of all Gross Revenue (defined below) received by Lessee for the full calendar quarter immediately preceding the day a rent payment is due, from operation of the Batting Cages. Lessee's rental payments shall be in addition to payments made for construction costs paid by Lessee pursuant to Section 402. Commencement Date shall mean the earlier of (i) June 16, 2003, or (ii) the day the Batting Cages are ready for public use, as reasonably determined by City's Community Services Director and communicated to Lessee, in writing, by the Community Services Director.

For purposes of this Lease, Gross Revenue shall mean one hundred percent (100%) of the revenue from the operation of the subject facility, including, but not limited to, the Batting Cages for reservation sales, coaching services, lessons, merchandise sales, private parties, special events, vending, pitching machines, refreshment sales and other revenues generated by the operation of the subject facility, including, but not limited to, business interruption insurance payments, if any. Gross Revenue shall also include (i) all payments to Lessee, if any, made by any other occupant on the Site and (ii) all revenue received, if any, by any other occupant present on the Site with Lessee's approval, if such occupant is under the control or ownership of (x) Lessee, (y) any person related to or under the control of Lessee or (z) any entity under the control or ownership of Lessee.

B. [§ 302] Non-Subordination of Rent or Other Sums

Lessee hereby covenants and agrees there shall be no subordination or encumbrance of any kind under this Lease or otherwise of (i) City's fee title ownership of the Site; (ii) City's interest in this Lease; and (iii) City's right to receive rent under this Lease.

C. [§ 303] Delinquency In Rental Payment; Collection of Rents

The failure of Lessee to pay rent by the due date shall constitute a default. In the event Lessee fails to pay the applicable rent on or before the due date, in addition to any other remedy provided by this Lease, Lessee shall pay City the delinquent rent and interest on the total delinquent rent at the rate of three percent (3%) over the prime rate of the largest bank operating in the State of California on the due date, from the date of each delinquency. The interest shall accrue from the due date of the rent to the date the rent is received by City. It is the intent of this provision City shall be compensated by such additional sums for loss resulting from rental delinquency including costs to City for servicing the delinquent account. City, at its option, may waive any such delinquency compensation required herein, upon written application of Lessee.

D. [§ 304] Right to Inspection and Audit of Records

Lessee shall keep full and accurate books and accounts, records, cash receipts, and other pertinent data showing its financial operations. Such books of account, records, cash receipts, and other pertinent data shall be kept for a period of five (5) years after the end of the Lease Year to which such items pertain. City shall be entitled, with reasonable notice, to inspect, examine and to copy at City's expense Lessee's books of account, records, cash receipts, and other pertinent data as necessary or appropriate for the purpose of this Lease. Lessee shall cooperate fully with City in making the inspection. Books and records shall remain confidential and not public, except as necessary to protect City's interests under this Lease, and shall be kept locally by Lessee.

IV. [§ 400] DEVELOPMENT OF THE SITE

A. [§ 401] Scope and Schedule of Development

In coordination with City and only after City's City Manager provides Lessee with a written notice to proceed, Lessee shall construct the Improvements upon the Site in accordance with the (i) site plan reasonably approved by City and (ii) building plans, drawings and specifications reasonably approved by City. The Improvements shall be completed and open for public use on or before June 16, 2003. The notice to proceed shall not be issued until Lessee has deposited with City Ten Thousand Dollars (\$10,000.00) as a good faith deposit (the "Deposit"). The Deposit shall be held by City in an interest bearing account and used solely for the purpose provided in this Section. If Lessee defaults under this Lease, terminates this Lease or otherwise fails to make payments due on the financing Lessee uses to construct, install or acquire the Improvements, then City shall have the right to use the Deposit and interest accrued thereon to make payments on that financing. City agrees to return to Lessee all unexpended portions of the

Deposit, and any interest accrued thereon, when that financing is fully repaid or the obligations to make such payments are assumed by another.

B. [§ 402] Cost of Construction

Except as otherwise expressly set forth in this section, the cost of developing the Site and the Improvements thereon, in accordance with this Lease shall be borne solely by Lessee. City and Lessee shall each pay one-half of the costs for providing one portable restroom facility at or near the Site. Lessee shall pay the total costs for providing one additional portable restroom facility at or near the Site, as directed by City, if, in its sole discretion, City determines the use of the Site requires the additional facility. In addition, if, upon a request from Lessee, City, in its sole discretion, permits Lessee to add lighting for nighttime use of the Site, then Lessee shall pay the total cost of design, purchase, installation, operation and maintenance of that lighting, as well as the total cost of design, purchase, installation, operation and maintenance of lighting for the entry sign.

C. [§ 403] No Construction Before Notice

No work of any kind shall be commenced on the Site and no building or other materials shall be delivered to the Site for construction of any improvements, nor shall any other building or land development work be commenced on or building materials be delivered to the Site at any time during the term of the Lease, until at least ten (10) days following notice by Lessee to City of the intended commencement of such work or the delivery of such materials.

D. [§ 404] Notice of Non-Responsibility

City shall, at any and all times during the term of this Lease, have the right to post and maintain on the Site and to record as required by law any notice or notices of non-responsibility provided for by the mechanics' lien laws of the State of California. The work for which said ten (10) days written notice is required shall include, in addition to actual construction work, any site preparation work, installation of utilities, street construction or improvement, or any grading or filling of the Site.

E. [§ 405] Mechanic, Materialman, Contractor or Subcontractor's Liens

Subject to Lessee's right to contest as hereinafter provided, at all times during the term of the Lease, Lessee shall keep the Site, including all buildings and improvements now or hereafter located on the Site, free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Site. Lessee shall promptly (i) pay and discharge, or cause the Site to be released from, any such lien or claim of lien, or (ii) contest such lien and furnish City such bond as may be required by law to free the Site from the effect of such lien and to secure City against payment of such lien and against any and all loss or damage whatsoever in any way arising from Lessee's failure to pay or discharge such lien. In the event Lessee provides a bond in lieu of paying or discharging a lien as set forth herein, and City is

unable despite reasonably diligent effort to obtain an endorsement to any existing title policy in favor of City insuring City's interest in the Site free and clear of any such liens that have not been paid or discharged, Lessee shall, at Lessee's sole cost and expense, within thirty (30) days of City's written request therefor, provide City with such endorsement.

If Lessee fails to pay and discharge, or cause the Site to be released from, any such lien or claim of lien or to provide a bond as permitted hereunder within thirty (30) days after service on Lessee by City of a written request to do so, then City may pay, adjust, compromise and discharge any such lien or claim of lien on such terms and in such manner as City may reasonably deem appropriate. In such event, Lessee shall, on or before the first day of the next calendar month following any such payment by City, reimburse City for the full amount so paid by City, including any actual and reasonable attorneys' fees or other costs expended by City, together with interest thereon at the annual rate of interest equal to three percent (3%) over the prime rate of the largest bank operating in the State of California as of the close of business on the date of payment by City, or the highest lawful rate, whichever is less, from the date of payment by City to the date of Lessee's reimbursement of City.

On substantial completion of any work of improvement during the term of the Lease, Lessee shall record or cause to be recorded in the Official Records of Los Angeles County a notice of completion. Lessee hereby appoints City as Lessee's attorney-in-fact to record the notice of completion, which appointment shall only become effective on ten (10) days' notice upon Lessee's failure to record such a notice of completion after the work of improvement has been substantially completed; provided, that City shall not be obligated to record such a notice of completion and the failure of City to record said notice shall not excuse the failure of Lessee to discharge its obligation to record said notice of completion.

F. [§ 406]. Rights of Access

Representatives of City shall have the reasonable right of access to the Site without charges or fees, at normal construction hours during the period of construction for the purposes of this Lease, including, but not limited to, the inspection of the work being performed in constructing the Improvements. Such representatives of City shall be the City Manager, Public Works Director, Community Services Director and those who are so identified in writing by the City Manager of City. City shall provide reasonable prior notice to Lessee of such entry, and shall seek to minimize interference with Lessee's use of the Site and Improvements as much as is reasonably feasible. Such entry shall be in compliance with all applicable safety rules and regulations. City shall indemnify, defend, and hold harmless Lessee from and against any claim, liability, losses and damages caused by City during any such inspections, and shall be responsible for the prompt repair and/or restoration of any such damage caused by City during any such inspection.

G. [§ 407] Local, State and Federal Laws

Lessee shall carry out the construction of the improvements on the Site in conformity with all applicable laws, including all applicable federal and state labor standards and requirements.

H. [§ 408] Nondiscrimination During Construction

Lessee for itself and its successors and assigns agrees that in the construction of the improvements on the Site provided for in this Lease, Lessee will not discriminate against any employee or applicant for employment because of sex, marital status, race, color, creed, disability, age, religion, national origin, or ancestry.

V. [§ 500] USE OF THE SITE AND IMPROVEMENTS

A. [§ 501] Use of the Site and Improvements

Lessee covenants and agrees for itself, its successors, its assigns and every successor in interest to the Site and Improvements or any portion thereof, that during construction and thereafter through the remainder of the term of this Lease, Lessee, such successors and such assignees shall:

1. Develop, use, and maintain the Site solely for the Batting Cages in accordance with this Lease and all plans approved by City pursuant thereto and operate the Batting Cages to meet commercially reasonable safety standards. Subject to Section 301 and subsection 2 of Section 802, if, at Lessee's sole discretion, Lessee elects to set up a concession on the Site to service the adjacent skateboard park, or if Lessee, in his sole discretion, elects to enter into a sublease with a third party for a concession on the Site to service the adjacent skateboard park, Lessee and City acknowledge and agree such sublease and use is permissible under the terms of this Lease.

2. Permit City, annually, to conduct two (2) one-day events on the Site, at no charge. In the event of damage to the Site which is a direct result from either or both of these two one-day events, City shall assume the full cost of repairs or replacement for any such damages. City shall also carry its own insurance for such events, and shall indemnify and hold harmless Lessee for any injuries or damages, to person or to physical property, which occur on the Site as a direct result of activities occurring on the Site, during either or both of the two one-day events at the Site.

3. Subject to Sections 706-710, and 1314 of this Lease, operate, in substantially complete fashion, or cause the Improvements to be constructed on the Site to be operated, in substantially complete fashion, and continuously open for business to the general public in accordance with the standards set forth in this Lease; provided, however, that the requirements of

this subparagraph for continuous operation shall not apply temporarily for the period required for *bona fide* major remodeling.

4. a. Maintain, repair and operate the Site and all Improvements constructed or to be constructed thereon (including landscaping, lighting and signage), or cause the Site and all such Improvements to be maintained, in a first quality condition, free of debris, waste and graffiti, and in compliance with the terms of City's Municipal Code, and the following:

(1) All Improvements on the Site shall be maintained in good condition in accordance with the custom and practice generally applicable to the high quality batting cage operations, and in conformance and compliance with all plans, drawings and related documents approved by City pursuant to this Lease, all reasonable conditions of approval of land use entitlements adopted by City, including painting and cleaning of all exterior surfaces of all private improvements.

(2) Landscape maintenance shall include, without limitation, watering/irrigation; fertilization; mowing; edging; trimming of grass; tree and shrub pruning, trimming and shaping of trees and shrubs to maintain a natural and healthy appearance, road visibility, and irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

(3) Clean-up maintenance shall include, without limitation, maintenance of all sidewalks, paths and other paved areas in a clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping; clearance and cleaning of all areas maintained prior to the end of each day on which maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

(4) Lessee's maintenance and operation obligations for the Improvements shall include providing or paying for (a) all necessary utilities such as heat, light, water, gas, air conditioning, sewer service, telephone and other communications services; (b) all security, custodial and janitorial services; and (c) all landscaping materials, supplies and maintenance services.

(5) Lessee shall maintain and preserve the Improvements in excellent condition and working order, accomplishing the necessary preventative maintenance and repair or replacement of any items which are not in excellent working order and condition

(6) Lessee shall make necessary and appropriate capital improvements to preserve the Batting Cages and their ability to be utilized by the public and Lessee, including, but not limited to, from time to time making capital improvements and replacements which, to the extent reasonable and practicable in light of the remaining useful life of the Batting Cages, the cost to Lessee of any proposed replacements or

upgrades of such Batting Cages and the remaining Term of this Lease, take into account state of the art, technological and other changes in the maintenance and operation of high quality batting cages operations.

(7) Lessee shall assume responsibility, subject to the provisions of this Lease, for the operation and maintenance (including repair, restoration and reconstruction) of all of the improvements constructed on the Site and the costs thereof, and the City shall have no liability for costs of such operation and maintenance by Lessee or for any claims arising from the operation and maintenance (including repair, restoration and reconstruction) of such improvements. The parties agree and acknowledge Lessee shall not be responsible for repairs, maintenance or cleaning of any areas adjacent to the Site, particularly the adjacent skateboard park. Without limiting the generality of the foregoing, Lessee, in the maintenance of the improvements, shall observe the following standards:

- (a) Maintain the surface of all pedestrian areas level, smooth and evenly covered with the type of surfacing materials originally installed thereon or such substitute thereof as shall be in all respects equal thereto or better in quality, appearance and durability.
- (b) Remove all graffiti, papers, debris, filth and refuse, and sweep, wash down and/or clean all hard surfaces, including brick, metal, concrete, glass, wood and other permanent poles, walls or structural members as required.
- (c) Maintain such appropriate entrance, exit and directional signs, markers and lights as shall be reasonably required and in accordance with the practices prevailing in the operation of similar developments.
- (d) Clean lighting fixtures and relamp and/or reballast as needed.
- (e) Repaint striping, markers, directional signs, etc., as necessary to maintain in first-class condition.
- (f) Maintain landscaping as necessary to keep it in a first-class, thriving condition.
- (g) Maintain signs, including relamping and/or reballasting and/or repairing as required.
- (h) Provide security personnel and security measures to the extent reasonably necessary. Lessee shall seek the advice of the police department in planning appropriate security measures.

- (i) Maintain and keep in good condition and repair all benches, shelters, planters, coverings, banners, kiosks and other furniture, trash containers, sculptures, play areas, platforms and stages.

b. If City gives written notice to Lessee the maintenance or condition of the Site or any portion thereof or any improvements thereon does not comply with this Lease and such notice describes the deficiencies, Lessee shall correct, remedy or cure the deficiency within thirty (30) days following the submission of such notice, unless the notice reasonably states the deficiency is an urgent matter relating to public health and safety in which case Lessee shall cure the deficiency with all due diligence and shall complete the cure at the earliest possible time but in no even more than forty-eight (48) hours following the submission of the notice. In the event Lessee fails to maintain the Site or any portion thereof or any improvements thereon in accordance with this Lease and fails to cure any deficiencies within the applicable period described above, City shall have, in addition to any other rights and remedies hereunder, the right to maintain the Site and the improvements thereon, or portion thereof, or to contract for the correction of any deficiencies, and Lessee shall be responsible for payment of all such costs actually and reasonably incurred by City.

5. a. Pay when due all real estate taxes and assessments assessed and levied on the Site or any portion thereof or any improvements thereon or any interest therein; provided, that the following requirements shall apply to any appeal, objection or contest to any tax or assessment permitted to be made by Lessee under this Lease: the contest, opposition, or objection must be filed before the tax, assessment, or other charge at which it is directed becomes delinquent and written notice of the contest, opposition, or objection must be given to City before the date the tax or assessment, or other charge becomes delinquent. No such contest, opposition, or objection shall be continued or maintained after the date the tax, assessment, or other charge at which it is directed becomes delinquent unless Lessee has met one of the following conditions:

- (i) Paid such tax, assessment, or other charge under protest prior to its becoming delinquent; or
- (ii) Obtained and maintained a stay of all proceedings for enforcement and collection of the tax, assessment, or other charge by posting such bond or other matter required by law for such a stay; or
- (iii) Delivered to City a good and sufficient undertaking in a form reasonably acceptable to City's City Manager, in an amount equal to one hundred twenty-five percent (125%) of the amount in controversy (inclusive of fines, interests, penalties, costs, and other expenses that may have accrued or been imposed thereon) and issued by a surety company authorized to issue undertakings in California, conditioned on the payment by Lessee of the tax, assessment, or charge together with any fines, interest, penalties, costs, and expenses that may have accrued or been imposed thereon within thirty (30) days after final determination of Lessee's

contest, opposition, or objection to such tax, assessment, or other charge.

City shall not be required to join in any proceedings or contest brought by Lessee unless the provisions of any law requires the proceeding or contest be brought by or in the name of City or any owner of the Site. In that case, City shall join in the proceeding or contest or permit it to be brought in City's name but such action shall be without cost or other liability to City and Lessee agrees to pay to City all costs incurred by City in connection therewith.

B. [§ 502] Catering

At any time during the Term, Lessee may enter into agreements or amendments thereof, from time to time, with caterers or restaurant operators for purposes of providing food and beverage services in appropriate areas of the Site; provided, that Lessee has received in each such case the express written permission of City's City Manager, which consent shall not be unreasonably withheld or delayed. Any such agreements and amendments shall not be deemed to be Lease Transfers.

C. [§ 503] Management of the Site and Improvements

At all times during the Term, the Site and Improvements shall be managed or caused to be managed by Lessee in a prudent and business-like manner as necessary to maintain the Site and Improvements in a first-class condition.

On or before March 31st of each year of this Lease, Lessee shall submit to City a financial report by an independent certified public accountant agreed to by both parties for the previous fiscal year of Lessee. The financial report shall include an operating statement that segregates the operation of the Site from other Lessee operations and a report of net worth, and shall be in a form satisfactory to City and be subject to review and audit by an auditor designated by City. The audit by the City's auditor shall be at City's sole expense, if the audit report findings increase Gross Revenues by less than two percent (2%) of those reported in the financial report and at Lessee's sole expense if the audit report findings increase Gross Revenues by two percent (2%) or more of those reported in the financial report. The final financial report shall be submitted within ninety (90) days after the expiration date of this Lease, and shall cover the period between the last report and the expiration date.

During the term of this Lease, Lessee shall provide, or cause to be provided, personnel and services necessary to enable operation of the Batting Cages. All services shall be provided in consideration for the granting of this Lease and no amount shall be payable by City for such services. Without limiting the foregoing, Lessee agrees to provide the following services:

- (1) management and first aid;
- (2) supervision of security which shall include crowd control programs; and

(3) overseeing cleaning and janitorial services.

D. [§ 505] Obligation to Refrain from Discrimination

There shall be no discrimination against or segregation of any person, or group of persons, on account of sex, marital status, race, color, creed, religion, national origin, disability, age or ancestry in the use, occupancy, tenure or enjoyment of the Site and Improvements, and Lessee itself or any person claiming under or through it shall not establish or permit any such practice or practices of discrimination, or segregation with reference to the selection, location, number, use or occupancy of the Site and Improvements.

E. [§ 506] Quiet Enjoyment

The parties hereto mutually covenant and agree Lessee, by keeping and performing the covenants herein contained, shall at all times during the term of this Lease, peaceably and quietly have, hold and enjoy the Site and Improvements.

VI. [§ 600] TAXES, ASSESSMENTS AND OTHER CHARGES

A. [§ 601] Payment Generally

Lessee agrees to pay or cause to be paid, as and when they become due and payable, and before any fine, penalty, interest or cost may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof, all taxes, assessments, franchises, excises, license and permit fees, and other governmental levies and charges, general and special, ordinary and extraordinary, unforeseen and foreseen, of any kind and nature whatsoever which at any time during the term of this Lease may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien on: (1) the Site and Improvements or any part thereof or any appurtenance thereto; (2) the rent and income received by Lessee from subtenants, guests or others for the use or occupation of the Site and the Improvements thereon; or (3) this transaction or any document to which Lessee is a party, creating or transferring an interest or estate in the Site and Improvements. All such taxes, franchises, excises, license and permit fees, and other governmental levies and charges shall hereinafter be referred to as "Impositions", and any of the same shall hereinafter be referred to as an "Imposition". Any Imposition relating to a fiscal period of the taxing authority, a part of which period is included within the term of this Lease and a part of which is included in a period of time after the expiration of the term of this Lease, shall (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon, become a lien upon the Site and Improvements, or shall become payable, during the term of this Lease) be adjusted between City and Lessee as of the expiration of the term of this Lease, so that Lessee shall pay that portion of such Imposition which that part of such fiscal period included in the period of time before the expiration of the term of this Lease bears to such fiscal period, and City shall pay the remainder thereof; Lessee shall not be entitled to receive any apportionment, if Lessee shall be in default in the performance of any of Lessee's covenants and agreements as provided in this Lease.

The failure of Lessee to pay an Imposition that cannot under any circumstances give rise to a lien against the Site and Improvements shall not be a breach of the first paragraph of this Section 601. Lessee hereby agrees to defend, indemnify and hold harmless City and its respective officers, employees and consultants from and against all claims, liability, loss, damage, costs, or expenses (including reasonable attorney's fees and court costs) arising from or as a result of Lessee's failure to pay any Imposition to the extent that such Imposition relates to a fiscal period included within the term of this Lease.

B. [§ 602] Payment of Impositions in Installments

If, by law, any Imposition may at the option of the payer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Lessee may exercise the option to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments and, in such event, shall pay such installments as may become due during the term of this Lease as the same respectively become due and before any fine, penalty, further interest or cost may be added thereto; provided, however, that the amount of all installments of any such Imposition which will be the responsibility of Lessee pursuant to Section 601 herein above, and which are to become due and payable after the expiration of the term of this Lease, shall be deposited with City for such payment on the date which shall be one (1) year immediately prior to the date of such expiration.

C. [§ 603] City Right to Cure

If Lessee, in violation of the provisions of this Lease, shall fail to pay and to discharge any Imposition, City may (but shall not be obligated to) pay or discharge it, and the amount paid by City and the amount of all costs, expenses, interest and penalties connected therewith, including attorney fees, together with interest at the rate of three percent (3%) over the prime rate of the largest bank operating in the State of California on the date payment is made by City, shall be deemed to be and shall be payable by Lessee as additional rent and shall be reimbursed to City by Lessee on demand, provided that Lessee shall have failed to pay such Imposition within ten (10) business days after written notice from City to Lessee and such holder of City's intention to pay.

D. [§ 604] Tax Receipts

Lessee shall furnish to City, within forty-five (45) days after the date when any real property taxes, assessments or any other Imposition which could have any effect on City's title would become delinquent, official receipts of the appropriate taxing authority or other evidence satisfactory to City evidencing payment thereof.

E. [§ 605] Limits of Tax Liability

The provisions of this Lease shall not be deemed to require Lessee to pay municipal, county, state or federal income or gross receipts or excess profits taxes assessed against City, or municipal, county, state or federal capital levy, estate, succession, inheritance, gift, or transfer taxes of City, or corporation franchise taxes imposed upon any corporate owner of the fee of the Site; provided, however, that Lessee shall pay all taxes assessed by any governmental authority by virtue of any operation by Lessee conducted on or out of the Site and Improvements. It is agreed, in the event the State of California or any taxing authority, thereunder, changes or modifies the system of taxing real estate so as to tax the rental income from real estate in lieu of or in substitution (in whole or in part) for the real estate taxes and so as to impose a liability upon City for the amount of such tax, then Lessee shall be liable under this Lease for the payment of the taxes so imposed during the term of this Lease, or any renewal thereof, to the same extent as though the alternative tax was a tax upon the value of the Site and Improvements. In order to determine the amount of such alternative tax for which Lessee shall be liable, the Site and Improvements shall be considered as if it were an asset belonging only to City, and the rent paid hereunder shall be considered as if it belonged to City.

F. [§ 606] Contests

1. Lessee shall refrain from appealing, challenging or contesting in any manner the validity or amount of any tax assessment, encumbrance or lien on the Site, unless Lessee either pre-pays the assessment or encumbrance as a condition of challenging it, or posts a bond for one hundred twenty-five percent (125%) of the total assessment or encumbrance as a security in the event of an unsuccessful challenge. Lessee may also maintain a challenge to an Imposition if the proceedings to enforce the Imposition are stayed, pending the outcome of the challenge. This prohibition shall not apply to an appeal, challenge or contesting of the erroneous initial assessment for property tax purposes of the Site in the fiscal year of the completion of the improvements to be constructed pursuant to this Lease, and further provided that in the absence of transfer of ownership or new construction Lessee shall not be prohibited from appealing, challenging or contesting any increases in assessment of the Site for property tax purposes over and above the current 2% per annum permitted amount.

2. Lessee agrees any such permitted proceedings shall be begun without undue delay after any contested item is imposed and shall be prosecuted to final adjudication with reasonable dispatch. Lessee shall give City prompt notice in writing of any such contest at least ten (10) days before any delinquency occurs. In the event of any such contest and the final determination thereof adversely to Lessee, Lessee shall, before any fine, interest, penalty or cost may be added thereto for nonpayment thereof, pay fully and discharge the amounts involved in or affected by such contest, together with any penalties, fines, interest, costs and expenses that may have accrued thereon or that may result from any such contest by Lessee and, after such payment and discharge by Lessee, City will promptly return to Lessee such security as City shall have received in connection with such contest.

3. City shall cooperate reasonably in any such contest permitted by this Section 606, and shall execute any documents or pleadings reasonably required for such purpose. Any such proceedings to contest the validity or amount of Imposition or to recover back any Imposition paid by Lessee shall be prosecuted by Lessee at Lessee's sole cost and expense; and Lessee shall indemnify and save harmless City against any and all loss, cost or expense of any kind, including, but not limited to, reasonable attorneys' fees and expenses, which may be imposed upon or incurred by City in connection therewith.

G. [§ 607] Notice of Possessory Interest; Payment of Taxes and Assessments on Value of Entire Property

In accordance with California Revenue and Taxation Code Section 107.6(a), City states by entering into this Lease, a possessory interest subject to property taxes shall be created. Lessee or other party in whom the possessory interest is vested shall be subject to the payment of property taxes levied on such interest.

Lessee acknowledges and agrees the Site and/or the Improvements thereon, and any possessory interest therein, shall at all times after the Commencement Date, be subject to ad valorem taxes levied, assessed or imposed on such property.

H. [§ 608] Other Liens

Lessee shall not, directly or indirectly, create or permit to be created or to remain, and will promptly discharge, at its expense, any mortgage, lien, encumbrance or charge on or pledge of the Site or the Improvements, or fixtures and furnishings, or any part thereof, or Lessee's interest therein, or the rent, additional rent or other sums payable by Lessee under this Lease. Lessee shall notify City promptly of any lien or encumbrance which has been created on or attached to the Site and Improvements, or to Lessee's leasehold estate therein, whether by act of Lessee or otherwise. The existence of any mechanic's, laborer's, materialmen's, supplier's or vendor's lien, or any right in respect thereof, shall not constitute a violation of this Section if payment is not yet due upon the contract or for the goods or services in respect of which any such lien has arisen, or if such lien has been discharged by the posting of bonds or other lien-release security as is provided for such discharge by law.

VII. [§ 700] OWNERSHIP OF AND RESPONSIBILITY FOR IMPROVEMENTS

A. [§ 701] Ownership During Term and at Termination

All Improvements on the Site, whether or not constructed or installed by Lessee as permitted or required by this Lease shall, during the term of this Lease, become part of the Site and Lessee's leasehold interests under this Lease shall apply to those Improvements. All Improvements located on the Site, whether existing thereon on the Commencement Date, or constructed or installed thereon by Lessee as permitted or required by this Lease shall, at the

expiration or sooner termination of the term of this Lease, be and remain the property of City. Subject to Lessee's rights and obligations set forth in this Lease relating to alterations and additions, Lessee shall have no right at any time to waste, destroy, demolish or remove any of the Improvements. Lessee's rights and powers with respect to the Improvements are subject to the terms and limitations of this Lease. City and Lessee covenant for themselves and all persons claiming under or through them that the Improvements are real property.

B. [§ 702] Reserved

C. [§ 703] Maintenance and Repair of Improvements

Lessee agrees to assume full responsibility for the operation and maintenance of the Site and the Improvements and all fixtures and furnishings, thereon or therein, throughout the term hereof without expense to City unless otherwise specified herein, and to perform all repairs and replacements necessary to maintain and preserve the Site and the Improvements and fixtures and furnishings and walkways and landscaping in a decent, safe and sanitary condition in a manner reasonably satisfactory to City and in compliance with all applicable laws. Lessee agrees City shall not be required to perform any maintenance, repairs, or services or to assume any expense not specifically assumed herein in connection with the Site and the Improvements, fixtures and furnishings, and sidewalks and landscaping.

The condition of the Improvements required to be maintained hereunder upon completion of the work of maintenance or repair shall be equal in value, quality and use to the condition of such Improvements before the event giving rise to the work.

D. [§ 704] Waste

Lessee shall not commit or suffer to be committed any waste or impairment of the Site or the Improvements, or any part thereof.

Lessee agrees to keep the Site and the Improvements clean and clear of refuse and obstructions, and to lawfully dispose of all garbage, trash and rubbish.

E. [§ 705] Alteration of Improvements

Lessee shall not make or permit to be made any alteration of, addition to or change in the Improvements, other than (a) routine maintenance, repairs, interior decoration and minor interior alterations or (b) alterations, additions or changes not open to public view which cost in the aggregate less than an amount equal to Ten Thousand Dollars (\$10,000.00) escalated from the date of this Lease in accordance with the CPI, nor demolish all or any part of the Improvements, without the prior written consent of City's City Manager. In requesting such consent, Lessee shall submit to City detailed plans and specifications of the proposed work and an explanation of the need and reasons thereof. City may not unreasonably withhold consent for any proposed alterations of the Improvements on the Site.

Notwithstanding the prohibition in this Section 705, Lessee may make such changes, repairs, alterations, improvements, renewals or replacements to the Improvements as are required by reason of any law, ordinance, regulation or order of a competent government authority.

F. [§ 706] Damage to or Destruction of Batting Cages and Improvements

1. [§ 707] Lessee to Give Notice

In case of any damage to or destruction of the Improvements, or any part thereof, in excess of an amount equal to Ten Thousand Dollars (\$10,000.00) escalated from the date of this Lease in accordance with the CPI, Lessee shall within ten (10) days after Lessee becomes aware of such damage or destruction give written notice thereof to City generally describing the nature and extent of such damage or destruction.

G. [§ 708] Restoration

a. Lessee shall be responsible for the restoration of the Improvements in accordance with the damage and destruction clauses of this Lease.

b. In case of any damage to or destruction of the Improvements, or any part thereof, Lessee shall commence the restoration, replacement or rebuilding of the Improvements with such alterations and additions as may be approved by City (such restoration, replacement, rebuilding alterations and additions, together with any temporary repairs and property protection pending completion of the work being herein called "Restoration") within thirty (30) days of such damage or destruction, plus any additional period reasonably required to obtain any Net Insurance Proceeds to be used to pay all or a portion of the cost of such Restoration, and shall complete such Restoration within a reasonable period of time thereafter.

c. As used herein, the term "Net Insurance Proceeds" means the gross insurance proceeds paid by an insurer to Lessee for loss or damage to the Improvements on the Site and Improvements, less any and all costs and expenses (including, but not limited to reasonable attorneys' fees) incurred to recover said proceeds. Lessee agrees to promptly commence and prosecute to completion the settlement of insurance proceeds with respect to any event of damage or destruction of the Improvements on the Site.

d. Lessee agrees, notwithstanding any other provision of this Lease, upon any event of damage or destruction to the Improvements, Lessee shall at its sole cost and expense (whether or not Lessee terminates or intends to terminate this Lease pursuant to Section 710 below) immediately take or cause to be taken such actions and under and complete such work as is necessary to assure the safe condition of the damaged Improvements pending the ultimate disposition of the Improvements. In any instance where Lessee may elect to terminate this Lease rather than restore the Improvements

pursuant to Section 710 below, if Lessee does not terminate this Lease, Lessee shall restore the Improvements.

H. [§ 709] Application of Insurance Proceeds

Insurance proceeds carried under Article X which are received on account of any damage to or destruction of the Site or the Improvements thereon, or any portion thereof, (less the costs, fees and expenses incurred in the collection thereof, including without limitation attorney's fees and expenses) and if Lessee shall not make the election permitted in Section 710 below, shall be applied as follows:

a. Within a reasonable time and in any event within one hundred eighty (180) days after the damage to or destruction of the Improvements, Lessee shall furnish, or cause to be furnished to City evidence satisfactory to City (i) of the total cost of Restoration of the damaged or destroyed Improvements pursuant to Section 708 and (ii) that the total amount of money available will, when added to the insurance proceeds received and available to pay for the Restoration pursuant to the terms of this Section 709, be sufficient to pay the cost of such Restoration.

b. Net insurance proceeds received on account of any damage to or destruction of the Improvements, or any part thereof, shall be paid to Lessee or as Lessee may direct from time to time as Restoration progresses, solely to pay (or reimburse Lessee for) the cost of Restoration. Upon receipt by City of evidence Restoration has been completed and the cost thereof paid in full or has been adequately provided for, and there are no mechanic's or similar liens for labor or materials supplied in connection therewith which have not been adequately provided for, the balance, if any, of such proceeds shall be paid to Lessee.

c. Any insurance proceeds held by the recipient on any termination of this Lease and not required to be paid to City pursuant to the provisions of this Lease shall be paid first to the expenses of clearing the Site of any rubble and next to Lessee.

I. [§ 710] Damage or Destruction During Final Years of Term

Notwithstanding Sections 708 and 709 to the contrary, in the event of major damage or destruction to the Improvements on the Site during the last five (5) years of the term of this Lease, City shall not unreasonably withhold its approval if Lessee requests this Lease be terminated on thirty (30) days' written notice; provided, that Lessee first complies with all of the following conditions:

1. Lessee shall give City notice of the damage or destruction within ten (10) days after the event causing such damage and destruction.

2. Lessee shall give City notice requesting this Lease be terminated as a result of such damage or destruction within forty-five (45) days after settlement of insurance proceeds, but in any event within one hundred eighty (180) days after the event causing such damage or destruction.
3. Lessee shall pay to City all applicable rents to the date of such termination.
4. Lessee shall clear and remove all debris from the Site, restore the Site to a safe and neat condition, deliver possession of the Site to City, and shall quitclaim all right, title and interest in the Site to City.
5. Lessee shall transfer to City all insurance proceeds resulting from the casualty to be retained by City without limitation as to use.

Major damage or destruction to the Improvements as used in this Section means such damage or destruction that the cost of restoration will exceed fifty percent (50%) of the cost to replace the Improvements on the Site in their entirety; provided, that this Section shall not apply if City decides, in its sole discretion, to pay the cost of restoration in excess of that fifty percent (50%) replacement cost.

J. [§ 711] Faithful Performance and Labor and Material (Payment) Bonds; Indemnification; Nonresponsibility Notices

1. Lessee agrees to hold harmless and indemnify City and each of its officers, employees and agents against all claims, liabilities, costs and expenses, for labor and materials in connection with all construction, repairs or alterations on the Site and Improvements and the Improvements, and the cost of defending against such claims, including reasonable attorney's fees. Lessee shall also be responsible to pay for any damage caused to City property as a result of construction of the Improvements or use of the Site by Lessee and Lessee's invitees, subject to the provisions of Section 501 A. 2.

2. Lessee agrees to procure, or cause the procurement of, contractor's bonds covering labor, materials and faithful performance for construction on the Site and Improvements and the Improvements in accordance with the following requirements:

- a. As to the initial construction of the Improvements required by this Lease, such bonds shall be in an amount equal to one hundred twenty-five percent (125%) of the total sum of the construction prices to be paid to each sub-contractor whose sub-contract has a contract price in excess of Twenty Thousand Dollars (\$20,000), and shall be accompanied by the corporate guarantee of the general contractor in an amount equal to one hundred percent (100%) of the sum of the construction price in the contract entered into by Lessee and its general contractor.

- b. As to subsequent work involving repair or alteration of the Improvements in an aggregate amount exceeding \$250,000 plus escalations to such amount after the date of this Lease in accordance with the CPI, such bonds shall be in the amount equal to one hundred percent (100%) of the construction price in the contract entered into by Lessee and its general contractor. Subsequent work in an aggregate amount of \$250,000 (plus escalations to such amount after the date of this Lease in accordance with the CPI) or less shall not be subject to bonding requirements.

City's City Manager must first approve the bonds and the construction contract in writing as to content and form. Lessee shall, prior to commencement of construction, deliver to City a certificate or certificates from the bonding company or companies issuing the aforesaid bonds, naming City as additional co-obligees under said bonds.

3. The provisions of paragraphs 1. and 2. of this Section shall be applicable to construction, repairs or alterations to the Site and Improvements and the use of the Improvements at all times during the Term, subject to the provisions of Section 501 A. 2.

4. City shall have the right to post and maintain on the Site and the Improvements any notices of nonresponsibility provided for under applicable law.

VIII. [§ 800] ASSIGNMENT, SUBLETTING, TRANSFER

A. [§ 801] Warranty Against Transfer

1. Lessee hereby represents and warrants this Lease, the construction of the Improvements, and its other undertakings pursuant hereto are, and will be used for the purpose of Lessee constructing, maintaining and operation and Batting Cages. Lessee further recognizes the fact a change in ownership or control of Lessee or of a part thereof, or any other act or transaction involving or resulting in a change in ownership or with respect to the identity of the parties in control of Lessee or the degrees thereof, is for practical purposes a transfer or disposition of the Site and Improvements; and

2. The qualifications and identity of Lessee, and its principals, are of particular concern to the community and City. Lessee further recognizes it is because of such qualifications and identity City is entering into this Lease with Lessee.

B. [§ 802] Prohibition Against Transfer

1. Lessee shall not, except as permitted by this Lease, make any Transfer, hereinafter defined, to any person or entity (a "Transferee"), without the prior written consent of City. Any purported Transfer not permitted by this Article VIII or Article IX shall be *ipso facto* null and void, and no voluntary or involuntary successor to any interest of Lessee under such a Transfer shall acquire any rights pursuant to this Lease. These restrictions shall be binding on any successors, heirs or permitted Transferee of Lessee. "Transfer," as used herein, shall mean

any assignment or attempt to assign this Lease or any right herein, any total or partial transfer, sale, assignment, lease, sublease, license, franchise, gift, hypothecation, mortgage, pledge, encumbrance or the like; provided, that a transfer of operational responsibilities to another individual due to Lessee's physical or mental incapacity to operate the Site shall only be considered a Transfer if the periods of those Transfers exceed, in the aggregate, more than three (3) months.

2. This prohibition shall not be deemed to prevent (i) the granting of easements or permits for the development of the Site as reasonably approved by City, (ii) the renting or subleasing or licensing of space for occupancy consistent with the customary uses and practices for the Batting Cages and related facilities, including a skateboard concession, or (iii) the assignment of this Lease to any affiliate of Lessee or joint venture; provided, that Lessee submits evidence satisfactory to City the principals who own and control Lessee will maintain a majority controlling interest after consummation of such transaction and will have the ability to maintain a majority controlling interest throughout the term of this Lease.

3. No voluntary or involuntary successor in interest of Lessee shall acquire any rights or powers under this Lease except as expressly permitted under this Lease. This Lease may not be assigned, nor may a transfer of interest take place without the express, prior written consent of City.

4. During the existence of this Lease, Lessee shall promptly notify City of any and all changes whatsoever in the identity of the parties in control of Lessee, or a change in the degree thereof, of which it or any of its officers have been notified or otherwise have knowledge or information.

5. In the absence of specific express written provision to the contrary by City, a Transfer of the Site and Improvements, or portion thereof, as approved by City, shall not be deemed to relieve the Lessee or any other party from any obligations under this Lease arising on or after the effective date of the Transfer.

6. No provision hereof authorizing a Transfer of Lessee's interest herein shall be construed to authorize encumbrance of City's fee title to the Site or City's interest under this Lease, and Lessee shall not by any act or deed cloud City's fee title or City's interest under this Lease.

C. [§ 803] Investigation of Proposed Transferee; Costs

1. In the event that Lessee requests City's written consent to a proposed Transfer pursuant to Article VIII of this Lease, Lessee agrees to provide City with such information, including financial statements as City may reasonably require in order to evaluate the solvency, financial responsibility and relevant business acumen and experience of any proposed Transferee. Such information shall include, without limitation, a balance sheet of the proposed Transferee as of a date within ninety (90) days of the request for City's consent and statements of income or profit and loss of the proposed subtenant or assignee for the two-year period preceding

the request for City's consent, if the same be available (or such other similar information as shall be available at the time the request for approval of the Transfer is made), and a written statement in reasonable detail as to the business and experience of the proposed Transferee during the five (5) years preceding the request for City's consent.

Within thirty (30) days after the receipt of Lessee's written notice requesting City approval of a Transfer, City shall respond in writing by stating what further information, if any, City reasonably requires in order to determine whether or not to approve the requested Transfer. Upon receipt of such a timely response, Lessee shall promptly furnish to City such further information as may be reasonably requested.

Lessee's request for approval of a Transfer and delivery of necessary information for financing purposes shall be deemed complete twenty (20) days after City's receipt thereof and Lessee's request for approval of a Transfer and delivery of necessary information for all other types of Transfer shall be deemed complete thirty (30) days after City's receipt thereof if City does not deny approval or if no timely response requesting further information regarding the proposed assignee is delivered to Lessee, or, if such a timely response requesting further information is received, on the date which is fifteen (15) days after the date Lessee delivers such additional information to City. None of the foregoing shall restrict City's rights to deny approval of any Transfer not found acceptable by City pursuant to this Lease. Any Transfer requiring City's consent shall only be effective upon City's written consent to such Transfer.

City shall approve or disapprove any requested Transfer for financing purposes requiring City approval within thirty (30) days after Lessee's request therefor is accepted as complete or is deemed complete, and City shall approve or disapprove any other type of requested Transfer requiring City approval within forty-five (45) days after Lessee's request therefor is accepted as complete or is deemed complete. Any disapproval shall be in writing and shall specify the reasons for the disapproval and, if applicable, the conditions required to be satisfied by Lessee in order to obtain approval.

2. If City consents to any Transfer pursuant to Article VIII, such consent shall not be effective unless and until Lessee gives City notice of the Transfer and a copy of any documents effecting and/or evidencing such Transfer, and unless and until any such Transferee (other than a sublessee) assumes all of the obligations and liabilities of Lessee under this Lease.

3. Bankruptcy. It is acknowledged and agreed this Lease is a lease of real property within the meaning of Subsection 365(b) (3) of the Bankruptcy Code, 11, U.S.C. To the extent not prohibited by provisions of the Bankruptcy Code, 11 U.S.C. Section 101 et seq., including Section 365(f)(1) thereof, Lessee on behalf of itself, creditors, administrators and assigns waives the applicability of Sections 541(c) and 365(e) of the Bankruptcy Code of 1978 unless the proposed assignee of the Trustee for the estate of the bankrupt meets City's standards for consent. City has entered into this Lease with Lessee in order to obtain for the benefit of the Site the unique types of facilities, businesses, services and goods which Lessee can bring to the Site; the foregoing prohibition on Transfer or subletting is expressly agreed to by Lessee in consideration of such fact. Any person or entity to which this Lease is assigned pursuant to the

provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of such Transfer. Any such assignee shall upon demand execute and deliver to City an instrument confirming such assumption.

4. City's Fee. Lessee agrees to reimburse City for City's reasonable costs and attorney's fees incurred in connection with the processing and documentation of any requested Transfer, subletting, transfer, change of ownership or hypothecation of this Lease or Lessee's interest in and at the Site, or any party thereof, which required City's approval hereunder, in an amount not to exceed Five Thousand Dollars (\$5,000.00) for each such Transfer (which amount shall be adjusted each year by the CPI).

5. No Waiver. The acceptance by City of any payment due hereunder from any other person shall not be deemed to be a waiver by City of any provision of this Lease or to be a consent to any Transfer or subletting. Consent by City to one or more Transfers of this Lease or to one or more sublets of the Site shall not operate as a waiver or estoppel to the future enforcement by City of its rights pursuant to the provisions of this Lease.

D. [§ 804] Release of Construction Covenants

1. Within thirty (30) days after completion of all construction and development to be completed by Lessee upon the Site this Lease, City shall furnish Lessee with a Release of Construction Covenants, in such form as to permit it to be recorded in the Office of the County Recorder of Los Angeles County, upon written request therefor by Lessee. City shall not unreasonably withhold such Release of Construction Covenants. Such Release of Construction Covenants shall constitute evidence of satisfactory completion of the construction required under this Lease, and the Release of Construction Covenants shall so state.

2. If City refuses or fails to furnish a Release of Construction Covenants for the Site after written request from Lessee, City shall, within thirty (30) calendar days after the written request, provide Lessee with a written statement of the reasons City refused or failed to furnish the Release of Construction Covenants for the Site. The statement shall also contain City's opinion of the action Lessee must take to obtain a Release of Construction Covenants for the Site, but it need not contain technical information or instructions. If the reason for such refusal is confined to the immediate availability of specific items of landscaping or other minor items or the failure to complete "punch list" items, City shall issue the Release of Construction Covenants upon the posting of a bond or other security instrument in form and content acceptable to City and in an amount representing the fair value of the work not yet completed, which bond or other security instrument shall secure Lessee's obligation to complete all outstanding items of construction and development within sixty (60) days following the issuance of the Release of Construction Covenants.

3. Such Release of Construction Covenants is not notice of completion as referred to in Section 3093 of the California Civil Code.

IX. [§ 900] NO SUBORDINATION OF CITY'S INTERESTS

City's interest in the Site under this Lease is a vested landlord's reversionary interest and not just a contractual obligation of Lessee. Notwithstanding anything which is or appears to be to the contrary in this Lease, Lessee shall not encumber City's interest under this Lease or City's fee interest in the Site by any mortgage, deed of trust, lien, security instrument or financing conveyance of any kind whatsoever.

X. [§ 1000] INDEMNIFICATION AND INSURANCE

A. [§ 1001] Indemnification

Throughout the term of this Lease, Lessee agrees to and shall defend, indemnify and hold harmless City and each of its officers, employees, agents, contractors and consultants from and against all claims, liability, loss, damage, costs or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person which shall be directly or indirectly caused by or based on City's ownership of or interest in the Site or any portion thereof or any improvements thereon or the condition of the Site or any portion thereof or any improvements thereon or Lessee's rehabilitation, development, construction, use or operation of the Site or any portion thereof or any improvements thereon or any of Lessee's activities under this Lease, whether such actions or inactions thereof be by Lessee or anyone directly or indirectly employed or contracted with by Lessee and whether such damage or injury shall accrue or be discovered before or after the termination of this Lease. Lessee shall not be responsible for (and such indemnity shall not apply to) property damage or bodily injury caused by entry onto the Site and Improvements by City pursuant to various provisions of this Lease, and/or to the extent caused by the willful misconduct or gross negligence of City or any of its designated officers, employees, agents, contractors or consultants. Lessee's obligations set forth in this paragraph shall not apply (i) to injuries, damages or losses to person or to physical property, which occur as a direct result of activities occurring on the Site, during either or both of the two one-day events at the described in paragraph 2. of subsection A. of Section 501 (ii) to injuries, damages or losses to person or physical property which occur on areas adjacent to the Site, but not on the Site itself and which are not directly or indirectly related to use of the Site, nor (iii) to injuries, damages or losses to person or physical property which occur on areas adjacent to the Site, but not on the Site itself and which are directly or indirectly related to use of a skateboard.

B. [§ 1002] Required Insurance

During the term of this Lease, Lessee at its sole cost and expense shall:

- I. Keep or cause to be kept a policy or policies of insurance against loss or damage to the Improvements on the Site, resulting from fire, earthquake (to the extent commercially available at commercially reasonable rates), windstorm, hail, lightning, vandalism, malicious mischief, riot and civil

commotion, and such other perils ordinarily included in extended coverage fire insurance policies. Such insurance shall be maintained in an amount not less than one hundred percent (100%) of the full insurable value of the Improvements as defined herein in Section 1003 (such value to include amounts spent for construction of the improvements, architectural and engineering fees, and inspection and supervision).

2. Maintain or cause to be maintained use and occupancy or business interruption or rental income insurance against the perils of fire, windstorm, hail, lightning, vandalism and malicious mischief, riot and civil commotion, and such other perils ordinarily included in extended coverage fire insurance policies, in an amount equal to not less than two times the sum of the rent paid to City in any year under this Lease and twelve (12) months fixed operating expenses of Lessee, except to the extent such insurance is not commercially available at commercially reasonable rates due to reasons other than the wrongful acts or omissions or dangerous or hazardous activities of Lessee.
3. Maintain or cause to be maintained public liability insurance, to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever, resulting directly or indirectly from any act or activities of Lessee or under Lessee's control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person caused directly or indirectly by or from the acts or activities in connection with the Site and Improvements of Lessee or its invitees and sublessees, or any person acting for Lessee, or under its control or direction. Any such property damage and personal injury insurance maintained by Lessee at any time during the term of this Lease shall name City, and each of its respective officers, employees, agents and consultants, as additional insureds and shall also provide for and protect City against incurring any legal cost in defending claims for alleged loss. Such personal injury and property damage insurance shall be maintained in full force and effect during the entire term of this Lease in an amount not less than Five Million Dollars (\$5,000,000) aggregate limit as of the Effective Date of Lease, which minimum amount of coverage shall escalate on the fifth anniversary of the Effective Date of Lease and once every five years thereafter in proportion to the escalation, if any, during such period in the CPI. Lessee agrees provisions of this paragraph 3., as to maintenance of insurance, shall not be construed as limiting in any way the extent to which Lessee may be held responsible for the payment of damages to persons or property resulting from Lessee's activities, or activities of its invitees and sublessees or the activities of any other person or persons for which Lessee is otherwise responsible.

4. Maintain or cause to be maintained worker's compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the Worker's Compensation Insurance and Safety Act now in force in California, or any act hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such worker's compensation insurance shall cover all persons employed by Lessee in connection with the Site and Improvements, and shall cover full liability for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for or on behalf of any person incurring or suffering injury or death in connection with the Site and Improvements, or the operation thereof by Lessee.

C. [§ 1003] Definition of "Full Insurable Value"

The term "full insurable value" as used in Section 1002 shall mean the actual replacement cost (excluding the cost of excavation, foundation and footings below the ground level and without deduction for depreciation) of the Improvements, including the cost of construction of the Improvements, architectural and engineering fees, and inspection and supervision. To ascertain the amount of coverage required, Lessee shall cause the full insurable value to be determined from time to time by the insurer or by a qualified expert mutually acceptable to City and Lessee, not less often than once every three years.

D. [§ 1004] General Insurance Provisions

All insurance provided under Section 1002 of this Lease shall be primary insurance for the benefit of Lessee and City.

All insurance provided under Section 1002 shall be periodically reviewed by the parties for the purpose of mutually increasing or decreasing the minimum limits of such insurance, from time to time, to amounts which may be reasonable and customary for similar facilities of like size and operation.

The insurance to be provided by Lessee may provide for a deductible or self-insured retention of not more than Five Thousand Dollars (\$5,000.00), with such amount to increase at such times as City may require increases in the policy limits as set forth above; provided, that the percentage increase in the deductible or self-insured retention shall not exceed the percentage increase in the CPI since the last requested adjustment; and provided, further, that Lessee may maintain such higher deductibles or self-insured retention as may be approved in writing by City's City Manager. In the event such insurance does provide for deductibles or self-insured retention, Lessee agrees it will fully protect City each of its boards, officers, agents, consultants and employees in the same manner as those interests would have been protected had the policy or policies not contained the deductible or retention provisions.

All insurance herein provided for under Section 1002 shall be effected under policies issued by insurers of recognized responsibility licensed or permitted to do business in the State of California, subject to the reasonable approval of City's City Attorney.

Any insurance required to be maintained by Lessee pursuant to Section 1002 may be taken out under a blanket insurance policy or policies covering other premises or properties, and other insureds in addition to the parties hereto; provided, however, that any such policy or policies of blanket insurance shall specify therein, or supplemental written certification from the insurers under such policies shall specify, the amount of insurance irrevocably allocated to the coverage to be provided under Section 1002 and provided further, that in all other respects, any such blanket policy shall comply with the other provisions of Section 1002.

All policies or certificates of insurance shall provide that such policies or certificates shall not be canceled or materially changed without at least thirty (30) days prior written notice to City.

Copies of such policies, or certificates thereof subject to the reasonable approval of City's City Attorney, shall be deposited with City together with appropriate evidence of payment of the premiums therefor; and, at least thirty (30) days prior to expiration of any such policy, copies of renewal policies shall be so deposited.

E. [§ 1005] Failure to Maintain Insurance

If Lessee fails or refuses to procure or maintain insurance as required by this Lease, City shall have the right, and without notice, to procure and maintain such insurance. The premiums paid by City shall be treated as additional rent due from Lessee, to be paid on the first day of the month following the date on which the premiums were paid. City shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

F. [§ 1006] Disposition of Insurance Proceeds Resulting from Loss or Damage to Improvements

1. Subject to the provisions of paragraph 2., below, proceeds of insurance with respect to loss or damage to the Improvements to be maintained and repaired by Lessee during the term of this Lease shall be payable, under the provisions of the policy of insurance, to Lessee, or, if such loss or damage involves the need for Lessee to obtain any governmental approvals or permits, jointly to Lessee and City, and said proceeds shall constitute a trust fund to be used for the repair, restoration or reconstruction of the Improvements in accordance with plans and specifications approved in writing by City. Lessee shall have first right of reimbursement from any money deposited in such trust account for any payments towards the repairs of loss or damages actually made by Lessee.

2. In the event this Lease is terminated by mutual agreement of City and Lessee, and the Improvements are not repaired, restored or reconstructed, the insurance proceeds shall be

applied first to any payments due under this Lease from Lessee to City, second to restore the Site to a neat and clean condition and, finally, any excess shall be paid to Lessee.

3. Lessee hereby waives any claim against City for any loss covered by insurance of the type specified in Section 1002; and Lessee, shall obtain from its insurance company or companies a waiver of any right of subrogation that it may have against City.

XI. [§ 1100] RESERVED

XII. [§ 1200] DEFAULTS, REMEDIES AND TERMINATION

A. [§ 1201] Defaults - General

1. Subject to the extensions of time set forth in Section 1314 of this Lease, failure or delay by either party to perform any term or provision of this Lease constitutes a default under this Lease. The party who so fails or delays must immediately commence to cure, correct, or remedy such failure or delay, and shall complete such cure, correction or remedy with reasonable diligence and, in any event, for monetary defaults within thirty (30) days of such failure or delay, and for non-monetary defaults within the time reasonably required for cure with reasonable diligence, not to exceed one hundred and eighty (180) days plus any period or periods of enforced delay required by Section 1314 of this Lease (the "Cure Period").

2. The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Except as required to protect against further damages, and except as otherwise expressly provided in Sections 1207 and 1208 of this Lease, the injured party may not institute proceedings against the party in default until the expiration of the applicable Cure Period. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

3. Except as otherwise expressly provided in this Lease, any failure or delay by either party in asserting any of its remedies or rights as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

B. [§ 1202] Legal Actions

1. [§ 1203] Institution of Legal Actions

In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Lease. Such legal actions must be instituted in the Superior Court of the County of Los Angeles, State of California, in any other appropriate court in that county, or in the Federal District Court in the Central District of California.

2. [§ 1204] Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Lease.

3. [§ 1205] Acceptance of Service of Process

In the event that any legal action is commenced by Lessee against City, service of process on City shall be made by personal service upon City's City Manager, or in such other manner as may be provided by law.

In the event that any legal action is commenced by City against Lessee, service of process on Lessee shall be made by personal service upon Lessee and shall be valid whether made within or without the State of California, or in such manner as may be provided by law.

4. [§ 1206] Attorneys' Fees and Court Costs

In the event that either City or Lessee shall bring or commence an action to enforce the terms and conditions of this Lease or to obtain damages against the other party arising from any default under or violation of this Lease, then the prevailing party shall be entitled to an award of attorney's fees and court costs as reasonably determined by a court.

C. [§ 1207] Rights and Remedies are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Lease, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

D. [§ 1208] Damages

If either party defaults with regard to any of the provisions of this Lease, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not commenced to be cured within thirty (30) days after service of the notice of default and is not cured prior to the expiration of the applicable Cure Period, the defaulting party shall be liable to the nondefaulting party for any damages caused by such default, and the nondefaulting party may thereafter (but not before) commence an action for damages against the defaulting party with respect to such default.

E. [§ 1209] Specific Performance

If either party defaults with regard to any of the provisions of this Lease, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not commenced to be cured within thirty (30) days after service of the notice of default and is not cured prior to the expiration of the applicable Cure Period, the nondefaulting party, at its option, may thereafter (but not before) commence an action for specific performance of the terms of this Lease pertaining to such default.

F. [§ 1210] Additional Remedies of City

1. If Lessee defaults with regard to any of the provisions of this Lease, City shall serve written notice of such default upon Lessee. If the default is not commenced to be cured promptly after service of the notice of default or if the cure is not prosecuted to completion with all due diligence and in any event prior to the expiration of the applicable Cure Period, City, at its option, may thereafter (but not before):

- a. Correct or cause to be corrected said default and charge the costs therefor to the account of Lessee;
- b. Correct or cause to be corrected said default and pay the costs thereof from the proceeds of any insurance;
- c. Continue this Lease and Lessee's right to possession in effect and enforce its rights and remedies under the Lease, including the right to recover rent as it becomes due, as provided in Section 1951.4 of the California Civil Code.
- d. Have a receiver appointed to take possession of Lessee's interest in the Site and Improvements, with power in said receiver to administer Lessee's interest therein, to collect all funds available to Lessee in connection with its operation and maintenance thereof; and to perform all other acts consistent with Lessee's obligations under this Lease as the court deems proper;

- e. Maintain and operate the Site and Improvements without terminating this Lease.
- f. Terminate this Lease pursuant to Section 1211 hereof, by written notice to Lessee of its intention to do so.

2. City reserves and shall have the right at all reasonable times to enter the Site and the Improvements for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Site and the Improvements or to inspect the operations conducted thereon, subject to the limitations and requirements for City rights of access set forth in Section 405 of this Lease. Any such entry shall be made only after reasonable notice to Lessee. In the event that such entry or inspection by City discloses that the Site or the Improvements are not in a decent, safe, and sanitary condition, are damaged, or in disrepair, City shall have the right, after thirty (30) days written notice to Lessee and Lessee's failure to cure the problem within the Cure Period, to have any necessary maintenance or repair work done for and at the expense of Lessee and Lessee hereby agrees to pay promptly any and all costs incurred by City in having such necessary maintenance or repair work done in order to keep the Site and the Improvements in a decent, safe and sanitary condition.

3. The rights reserved in this Section 1210 shall not create any obligations on City or increase obligations imposed on City elsewhere in this Lease. The thirty-day (30-day) cure period shall apply to all defaults, both monetary and non-monetary. Further, City shall have the duty to mitigate its damages in the event of any default. If any default results in termination of this Lease, then Lessee shall have no further obligations under this Lease, which includes no further obligations for rent payments, and the only obligations due and owing after termination would be those which arose prior to the termination.

G. [§ 1211] Remedies and Rights of Termination

1. In the event that at any time during the term of this Lease, and in violation of this Lease, Lessee shall:

- a. Fail to commence and/or complete the construction of the Improvements as required by this Lease or within the time required by this Lease;
- b. Abandon or substantially suspend construction of the Improvements as required by this Lease prior to the completion thereof and issuance of a Release of Construction Covenants therefor by City;
- c. Use the Site and Improvements for any purpose other than those provided for in this Lease or fail to use and maintain the Site and Improvements in accordance with Section 501 of this Lease;

- d. Fail or refuse to pay to City when due the applicable rents and other sums required by this Lease to be paid by Lessee, including but not limited to payments required under Sections 300 *et seq.* of this Lease;
- e. Fail or refuse to pay when due any taxes, assessments or other Impositions as required by this Lease;
- f. Make or suffer to be made any voluntary or involuntary conveyance, assignment, sublease or other Transfer of the leasehold interest in the Site and Improvements, or any part thereof, or of the rights of Lessee under this Lease; provided, that this subparagraph does not apply to a skateboard concession or sublease which the parties contemplate are permitted under this Lease;
- g. Commit or suffer to be committed any waste or impairment of the Site or the Improvements, or any part thereof;
- h. Alter the Improvements in any manner except as expressly permitted by this Lease;
- i. Fail to maintain insurance as required by this Lease;
- j. Fail to make full repair and restoration of the Improvements in the event of damage or destruction;
- k. Engage in any financing except as permitted by the terms of this Lease, or any other transaction creating any mortgage on the Site, or placing or suffering to be placed thereon any lien or other encumbrance, or suffering any levy or attachment to be made thereon;
- l. Voluntarily file or have filed against it any petition under any bankruptcy or insolvency act or law, or be adjudicated a bankrupt, or make a general assignment for the benefit of creditors;
- m. Fail to pay when due any payment or charge or otherwise default on any loan secured by a leasehold mortgage permitted by this Lease;
- n. Abandon or surrender possession of the Site, or Lessee's interest therein;
- o. Fail to perform any of Lessee's Hazardous Substances covenants; or
- p. Fail to perform or comply with any other material term or provision hereof,

and any such failure or violation shall not be cured or remedied within the applicable Cure Period; then, in such event, City may, at its option and in addition to any other remedy provided for in this Lease, terminate the Lease and revert in City the leasehold interest theretofore transferred to Lessee, by written notice to Lessee of its intention to do so.

2. Upon termination of this Lease pursuant to this Section 1211 it shall be lawful for City to re-enter and repossess the Site without process of law, and Lessee, in such event, does hereby waive any demand for possession thereof, and agrees to surrender and deliver peaceably to City immediately upon such termination in good order, condition and repair, except for reasonable wear and tear. Upon such termination title to all Improvements on the Site specified in this Lease to remain in City, shall remain in City.

3. No ejectment, re-entry or other act by or on behalf of City shall constitute a termination unless City gives Lessee notice of termination in writing. Such termination shall not relieve or release Lessee from any obligation incurred pursuant to this Lease prior to the date of such termination.

4. Termination of this Lease under this Section 1211 shall not relieve Lessee from the obligation to pay any sum due to City or from any claim for damages against Lessee.

5. The right of termination provided by this Section 1211 is not exclusive and shall be cumulative to all other rights and remedies possessed by City, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which City may be entitled.

XIII. [§ 1300] GENERAL PROVISIONS

A. [§ 1301] Notices, Demands and Communications between the Parties

Formal notices, demands and communications between City and Lessee shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of City, to the attention of City's City Manager, and of Lessee as designated in Section 106 and Section 107 hereof. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section. Sufficient notice may also be given by personal delivery or reputable overnight delivery service in lieu of mail if reasonably adequate records are maintained of such service in the ordinary course of business by the person or entity effecting such service.

B. [§ 1302] Time of Essence

Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Lease.

C. [§ 1303] Conflict of Interests

1. No council member, official or employee of City shall have any personal interest, direct or indirect, in this Lease, nor shall any such council member, official or employee participate in any decision relating to the Lease which affects his/her personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

2. Lessee warrants it has not paid or given, and will not pay or give, any officer or employee of City any money or other consideration for obtaining this Lease.

D. [§ 1304] Nonliability of City Officials and Employees

No council member, official or employee of City shall be personally liable to Lessee, or any successor in interest, in the event of any default or breach by City or any for any amount which may become due to Lessee or successor or on any obligations under the terms of this Lease.

E. [§ 1305] Inspection of Books and Records

City has the right at all reasonable times to inspect the books and records of Lessee pertaining to the Site and Improvements as pertinent to the purposes of this Lease. Lessee also has the right at all reasonable times to inspect the books and records of City pertaining to the Site and Improvements as pertinent to the purposes of this Lease.

F. [§ 1306] No Partnership

Neither anything in this Lease contained, nor any acts of City or Lessee shall be deemed or construed by any person to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between City and Lessee.

G. [§ 1307] Compliance with Law

Lessee agrees, at its sole cost and expense, to comply and secure compliance with all the applicable and valid requirements now in force, or which may hereafter be in force, of all municipal, county, State and federal authorities, pertaining to the Site and Improvements, as well as operations conducted thereon, and to faithfully observe and secure compliance with, in the use of the Site and Improvements, all applicable county and municipal ordinances and state and federal statutes now in force or which may hereafter be in force, including all laws prohibiting discrimination or segregation in the use, sale, lease or occupancy of the property.

H. [§ 1308] Surrender of Property

Except as otherwise expressly provided in this Lease, upon the expiration or termination of this Lease pursuant to the terms hereof, it shall be lawful for City to reenter and repossess the

Site and Improvements without process of law, and Lessee, in such event, does hereby waive any demand for possession thereof, and agrees to surrender and deliver the Site and Improvements peaceably to City immediately upon such expiration or termination in good order, condition and repair, except for reasonable wear and tear.

I. [§ 1309] Severability

If any provision of this Lease shall be adjudged invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Lease shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

J. [§ 1310] Binding Effect

This Lease, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

K. [§ 1311] Captions

The captions contained in this Lease are merely a reference and are not to be used to construe or limit the text.

L. [§ 1312] No Recording of this Lease

This Lease shall not be recorded. Pursuant to the Agreement, a memorandum substantially similar to Exhibit C, hereto, will be recorded in the Official Records of Los Angeles County.

M. [§ 1313] Enforced Delay in Performance for Causes Beyond Control of Party

In addition to specific provisions of this Lease, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to causes beyond the control and without the fault of the party claiming an extension of time to perform, including war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor or supplier; acts or failure to act of any other public or governmental agency or entity (other than any act or failure to act of City, which shall not excuse performance by City). An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause. If, however, notice by the party claiming such extension is sent to the other party more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice.

L. [§ 1314] Entire Agreement, Waivers and Amendments

This Lease is executed in two (2) duplicate originals, each of which is deemed to be an original. This Lease includes thirty-nine (39) pages and three (3) exhibits. This Lease shall become effective on the date it is executed on behalf of City ("Effective Date").

2. All waivers of the provisions of this Lease must be in writing and signed by the appropriate authorities of City or Lessee and all amendments hereto must be in writing and signed by the appropriate authorities of City and Lessee.

M. [§ 1317] Approvals

Except as expressly provided otherwise in this Lease, approvals required of City or Lessee shall not be unreasonably withheld, conditioned or delayed.

CITY OF SOUTH PASADENA

Date: 3/19, 2003


By:


Harry A. Knapp, Mayor

ATTEST:


Sally Kilby, City Clerk

APPROVED AS TO FORM:


Joseph W. Pannone, City Attorney

DYLAN GAINES, an individual

Date: 03/18, 2003



sopasgaines \case-final

EXHIBIT A
MAP OF SITE

EXHIBIT B

LEGAL DESCRIPTION OF SITE

EXHIBIT "A"

A Lease over that portion of lots 68 and 69 of the Arroyo Wood Lots, as shown on map recorded in Book 3 of Maps, page 282, in the city of South Pasadena, State of California, records of Los Angeles County, described as follows:

Beginning at the intersection of Magnolia Drive and Arroyo Drive as shown on the Carl A. Plath Tract, recorded in Book 175 of Maps, page 47, in the city of South Pasadena, records of Los Angeles County, said centerline of Arroyo Drive having a bearing of North 20° 14' 30" East;

Thence North 53° 11' 33" West, a distance of 232.17 feet to the **True Point of Beginning**;

Thence South 78° 44' 32" West, a distance of 66.08 feet;

Thence South 70° 52' 22" West, a distance of 44.27 feet;

Thence North 00° 53' 04" West, a distance of 146.53 feet;

Thence North 78° 22' 44" East, a distance of 89.57 feet;

Thence South 00° 53' 04" East, a distance of 58.00 feet;

Thence South 14° 21' 19" East, a distance of 81.56 feet to the **True Point of Beginning**.

This lease contains 13,284 S.F., more or less.



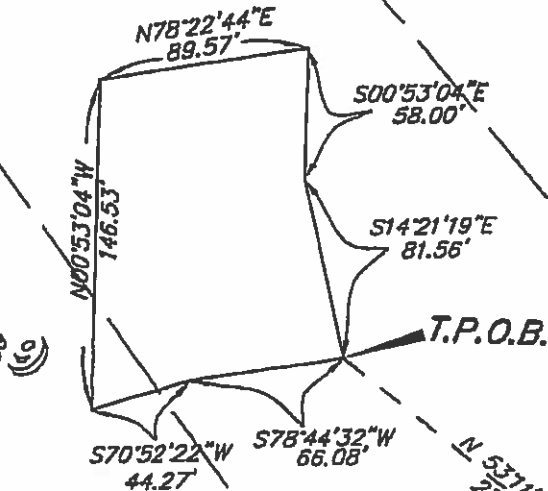
EXHIBIT "B"

ARROYO WOOD LOTS
WB 3/282

LOT 33

LOT 37

LOT 39



SCALE: 1"=80'



APPROX. EASTERLY LINE OF ARROYO WOOD
LOTS PER M.R. 3/279-283

STONEY
ROAD

P.O.B.

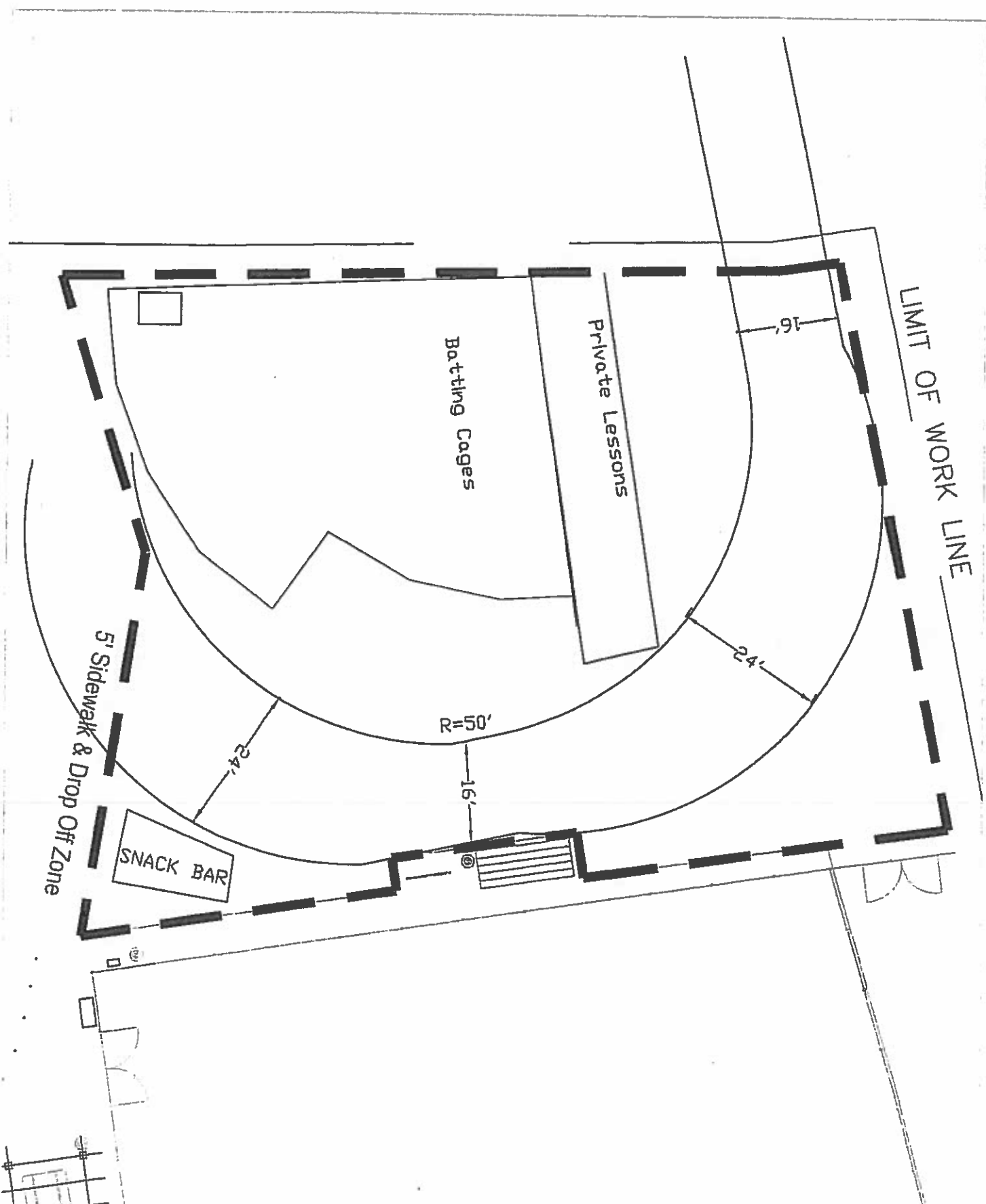
MAGNOLIA
DRIVE

ARROYO DRIVE
N20°14'30"E

CARL A.
PLATT TRACT



LAND DEVELOPMENT DESIGN CORPORATION		2313 E. Philadelphia St., Ste. F ONTARIO, CA 91761 (909) 930-1466 FAX (909) 930-1468	
PLANNING • CIVIL • SURVEYING			
DATE: 02/27/03	SCALE: 1"=80'	SHEET: 1 OF 1	JOB NO. 3455



SCALE: 1"=20' 	Prepared under the supervision of City Engineer	Revisions <table border="1"> <thead> <tr> <th>No.</th> <th>Date</th> <th>Description</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>	No.	Date	Description													CITY OF SOUTH PASADENA PROPOSED BATTING CAGES BOUNDARY AREA PLAN
	No.	Date	Description															

ATTACHMENT 2
First Amendment

AMENDMENT
TO LEASE AGREEMENT

THIS AMENDMENT to the Lease Agreement ("Amendment") is made as of this ___ day of May, 2010 by and between the CITY OF SOUTH PASADENA, ("City"), and DYLAN GAINES, an individual, TAO GAINES, an individual and ALL STAR BASEBALL SCHOOL, a corporation, (collectively "Lessee")

RECITALS

WHEREAS, on or about March 19, 2003, City and Lessee (collectively "Parties") entered into a Lease Agreement ("Agreement") for the installation, maintenance and operation of a state of the art batting cage facility on a site located at the Arroyo Youth Recreation Park; and

WHEREAS, the Parties desire to amend the Agreement to provide for a different method for rent payment and to add an additional two responsible entities as Lessee.

NOW THEREFORE, City and Lessee agree as follows:

- a) Lessee Section [§107] of the Agreement is hereby amended as follows:

Lessee is DYLAN GAINES, an individual, TAO GAINES, an individual and ALL STAR BASEBALL SCHOOL, a corporation ("Lessee"). All three of the aforementioned individuals and corporation, whom are collectively designated the Lessee, are each jointly and severally liable for all of the obligations of the Agreement and the Amendment.

The principal office of Lessee is located at 10945 Bluffside Dr. #127, Studio City, CA 91694

Whenever the term "Lessee" is used herein, such term shall also include any permitted nominee or assignee as herein provided.

- b) Quarterly Payment the first paragraph of [§301] of the Agreement is hereby amended in it entirety to read as follows:

Commencing with the 10th of May, 2010, and the tenth day of each month thereafter until termination of this Lease, Lessee shall pay to City, as rent, a sum equal to ten percent (10%) of all Gross Revenue (defined below) received by Lessee for the month preceding the month in which the rent is due, from operation of the batting cages.

c) **Remaining Provisions of the Agreement.** All other terms, conditions, and provisions of the Agreement, to the extent not modified with this Amendment, shall remain in full force and effect.

IN WITNESS WHEREOF this Amendment is signed by the parties hereto on the date first above written.

Dated: 5/19/10

"CITY"

By: Richard D. Schneider, Jr.
Richard D. Schneider, Mayor

Dated: 5/18/10

"LESSEE"

By: Dylan Gaines
Dylan Gaines, an individual

By: Tao Gaines
Tao Gaines, an individual

All-Star Baseball School

By: Dylan + Tao Gaines
Its Owners

ATTEST:

Sally Kilby
Sally Kilby, City Clerk

APPROVED AS TO FORM:

Richard L. Adams II.
Richard L. Adams II., City Attorney

ATTACHMENT 3

Second Amendment

SECOND AMENDMENT
TO LEASE AGREEMENT

THIS SECOND AMENDMENT to the Lease Agreement ("Second Amendment") is made as of this ^{5th} day of ~~May~~^{June}, 2013 by and between the CITY OF SOUTH PASADENA, ("City"), and DYLAN GAINES, an individual, TAO GAINES, an individual and ALL STAR BASEBALL SCHOOL, a corporation, (collectively "Lessee")

RECITALS

WHEREAS, on or about March 19, 2003, City and Lessee (collectively "Parties") entered into a Lease Agreement ("Agreement") for the installation, maintenance and operation of a state of the art batting cage facility on a site located at the Arroyo Youth Recreation Park;

WHEREAS, on or about May 19, 2013, City and Lessee (collectively "Parties") entered into an Amendment to Lease Agreement ("Amendment") to provide for a different method for rent payment and to add an additional two responsible entities as Lessee; and

WHEREAS, the Parties desire to amend the Agreement for the purpose of extending the Agreement for an additional five (5) years and to provide for additional reporting requirements.

NOW THEREFORE, City and Lessee agree as follows:

a) **Lessee of the Site** Section [§200] of the Agreement is hereby amended with the addition of a new subsection C. [§ 203] as follows:

C. [§203] Extension Term

The Term of this Lease is hereby extended for an additional five (5) years commencing July 1, 2013 and expiring on June 30, 2018 ("Extension Term"). From July 1, 2015 to the end of the Extension Term, either party may terminate this Lease, without cause, with a six (6) month notice of termination in writing. With the Extension Term, there is no right granted to Lessee to receive notice and an opportunity to negotiate a further extension of the Lease prior to its expiration.

b) **Rent** Section [§300] of the Agreement is hereby amended with the addition of a new subsection B. [§302] to read as follows:

B. [§302] Monthly Report

With each monthly payment required by Section 301, as amended, Lessee shall provide City with complete and accurate accounting of the gross receipts for the preceding month and a report of the number of attendees, for said month, at the batting cages, batting and pitching lessons, camps and other activities conducted at the Site.

c) **Remaining Provisions of the Agreement.** All other terms, conditions, and provisions of the Agreement with the Amendment, to the extent not modified with this Second Amendment, shall remain in full force and effect.

IN WITNESS WHEREOF this Amendment is signed by the parties hereto on the date first above written.

Dated: June 5, 2013

"CITY"

By: Richard D. Schneider
Richard D. Schneider, Mayor

Dated: 24 April 2013

"LESSEE"

By: Dylan Gaines
Dylan Gaines, an individual

By: Tao Gaines
Tao Gaines, an individual

All-Star Baseball School

By: Wen Guo
Owners

ATTEST:

Sally Kilby
Sally Kilby, City Clerk

APPROVED AS TO FORM:

Richard L. Adams II
Richard L. Adams II., City Attorney

ATTACHMENT 4
Third Amendment

THIRD AMENDMENT
TO LEASE AGREEMENT

THIS THIRD AMENDMENT to the Lease Agreement ("Third Amendment") is made as of this 16th day of May, 2018 by and between the CITY OF SOUTH PASADENA, ("City"), and DYLAN GAINES, an individual, TAO GAINES, an individual and ALL STAR BASEBALL SCHOOL, a corporation, (collectively "Lessee")

RECITALS

WHEREAS, on or about March 19, 2003, City and Lessee (collectively "Parties") entered into a Lease Agreement ("Agreement") for the installation, maintenance and operation of a state of the art batting cage facility on a site located at the Arroyo Youth Recreation Park; and

WHEREAS, on or about May 19, 2013, City and Lessee (collectively "Parties") entered into an Amendment to Lease Agreement ("Amendment") to provide for a different method for rent payment and to add an additional two responsible entities as Lessee; and

WHEREAS, on or about May 16, 2018, City and Lessee (collectively "Parties") entered into a Third Amendment to Lease Agreement ("Third Amendment") to provide for an increase in rent payment; and

WHEREAS, the Parties desire to amend the Agreement for the purpose of extending the Agreement for an additional three (3) years with two additional one (1) year term extensions and to provide for an increase in monthly gross receipts from 10% to 15%.

NOW THEREFORE, City and Lessee agree as follows:

a) **Lease of the Site.** Section [§200] of the Agreement is hereby amended with the addition of a new subsection C. [§ 203] as follows:

C. [§203] Extension Term

The Term of this Lease is hereby extended for an additional three (3) years commencing July 1, 2018 and expiring on June 30, 2021 ("Extension Term"). Lessee may seek to extend the lease for up to two consecutive one year terms, conditioned upon the City's written approval. Conditioned upon Lessee's compliance with all Lease terms, Lessee may extend the term of the Lease by one year—until June 30, 2022—by providing a request to extend at least 60 days prior to termination of the Extension Term ("First Renewal Option"). Conditioned upon Lessee's compliance with all Lease terms, Lessee may extend the term of the Lease by one additional year—until June 30, 2023—by

providing a request to extend at least 60 days prior to termination of First Renewal Option ("Second Renewal Option"). The Second Renewal Option is the final option under this Lease. From July 1, 2018 to the end of the all Extension Terms and Renewal Options, either party may terminate this Lease, without cause, with a six (6) month notice of termination in writing. With the Extension Term or Renewal Option, there is no right granted to Lessee to receive notice and an opportunity to negotiate a further extension of the Lease prior to its expiration.

b) **Rent.** Section [§300] of the Agreement is hereby amended with the addition of a new subsection D. [§302] to read as follows:

D. [§302] Monthly Rent

With each monthly payment required by Section 301, as amended, Lessee shall pay to City, as rent, a sum equal to fifteen percent (15%) of all Gross Receipts received by Lessee for the month immediately preceding the day a rent payment is due, from operation of the Batting Cages.

c) **Rent.** Section [§300] of the Agreement is hereby amended with the addition of a new subsection E. [§305] to read as follows:

E. [§305] Use of Baseball Fields

Lessee may use the City baseball fields for Baseball Camps, subject to prior reservation and City approval. Field use fees will be waived for this purpose. Lessee must reserve the fields in advance through field reservation permits approval process which takes place in the spring and fall; such field reservation permits are subject to Community Services Director approval. The duration for Baseball Camp is limited to a total of four weeks in a calendar year, three weeks in summer and one week in winter, not to exceed 60 hours.

d) **Remaining Provisions of the Agreement.** All other terms, conditions, and provisions of the Agreement with the Amendment, to the extent not modified with this Third Amendment, shall remain in full force and effect.

(SIGNATURES TO FOLLOW ON THE NEXT PAGE)

IN WITNESS WHEREOF this Amendment is signed by the parties hereto on the date first above written.

Dated: May 10, 2018

"CITY"

By: Richard D. Schneider, M.D.
Richard D. Schneider, M.D., Mayor

Dated: 11 May 2018

"LESSEE"

By: Dylan Gaines
Dylan Gaines, Owner/President

By: Tao Gaines
Tao Gaines, an individual

All-Star Baseball School

By: Dylan Gaines + Tao Gaines
Owners

ATTEST:

Evelyn G. Zheimer
Evelyn G. Zheimer, City Clerk

APPROVED AS TO FORM:

Teresa L. Highsmith
Teresa L. Highsmith, City Attorney